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## Globalization and the Monopoly of ABA-Approved Law Schools: Missed Opportunities or Dodged Bullets?

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# **GLOBALIZATION AND THE MONOPOLY OF ABA-APPROVED LAW SCHOOLS: MISSED OPPORTUNITIES OR DODGED BULLETS?**

*Carole Silver\**

## **INTRODUCTION**

As the market for lawyers and for law itself has responded to global forces, legal education also is becoming accustomed to working within a global context. U.S. law schools now quite routinely look beyond the country's borders to attract new students for their U.S.-based programs. In addition, law schools are establishing global curricular innovations, identifying non-U.S. employer externship opportunities for current and graduating students, seeking potential faculty from overseas, and generally working to expand their overall reputations beyond the borders of the United States. As with law firms and business generally, it is no longer sufficient to be domestic only; in order to gain prestige and to effectively compete in the U.S. market, schools must have a credible claim to being globally connected, if not global themselves.

Globalization provides a new lens for interpreting the legal profession's monopoly on the practice of law. The monopoly exerts its force in defining disciplinary jurisdiction and by restricting competition from nonlawyers, and it also provides a geographic basis for limiting competition over access to the profession and its claim to legitimacy as the interpreter of U.S. law. This control is exerted through the regulatory regime governing the production of lawyers in the United States,<sup>1</sup> which is grounded in the accreditation overview of the Council of the American Bar Association's (ABA) Section of Legal Education and Admissions to the Bar (the Council).

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\* Professor of Global Law and Practice, Northwestern University School of Law. Many thanks to Bruce Green, Jay Krishnan, John O'Hare, Katherine Pearson, Mitt Regan, Susan Shapiro, Jim Speta, Laurel Terry, Hon. Gerald VandeWalle, and the participants at the Colloquium, *The Legal Profession's Monopoly on the Practice of Law*, 82 FORDHAM L. REV. 2563 (2014), for very helpful comments and discussions. Additional thanks to the Louis Stein Center for Law and Ethics and its leaders for their thoughtful approach to organizing the Colloquium.

1. Richard L. Abel, *Revisioning Lawyers*, in *LAWYERS IN SOCIETY: AN OVERVIEW* 1, 2 (Richard L. Abel & Philip S. C. Lewis eds., 1996) (describing the "professional project" as the legal profession's attempt to gain and maintain control over "the production of and by producers").

Despite the reorientation of law schools toward globalization, however, the regulatory regime in which U.S. law schools operate has not made a parallel shift toward embracing a global framework. Rather, it continues to maintain a distinctly U.S.-centric approach. The value of U.S. legal education is tied intimately to its role as a condition to obtaining a license to practice in the United States, but this part of the equation is lost in the global realm.<sup>2</sup> While graduation from an ABA-approved law school is universally accepted as the educational component of bar eligibility, the U.S. legal education path pursued by most international students is not recognized as relevant to bar eligibility. This is because the Council, which is responsible for establishing a framework for regulating and monitoring law schools under the authority of the Department of Education,<sup>3</sup> has refused to acknowledge any degree other than the juris doctor (J.D.) for bar eligibility purposes. Most international students, however, enroll in the one-year graduate degree program (leading to an LL.M.) in the United States, which they pursue after first completing their home country legal education (and for many certain licensing requirements, too). In fact, the Council has not provided a framework for recognizing the relevance for U.S. bar eligibility purposes even of the combination of legal education and licensing earned in an overseas jurisdiction, much less for assessing comparability to the education available in an ABA-approved law school.

The failure of the Council to engage with the global framework that structures much of the activities and work of U.S. law schools took shape in the context of deliberations concerning two issues: whether to authorize law schools based outside of the United States (referred to in this Article as “foreign law schools”) to apply for ABA accreditation,<sup>4</sup> and whether to recognize the legal education provided by foreign law schools (referred to here as “foreign legal education”) as relevant for U.S. bar eligibility purposes.<sup>5</sup> The Council refused to extend recognition on each issue, as described below. Nevertheless, this failure to act has not prevented the global actors involved in these issues—notably foreign law schools and international law graduates—from continuing to exert an influence on the U.S. regime. Instead of pursuing recognition and legitimacy directly from the Council, however, these global actors now advance their interests along secondary paths where they seek legitimation. This, in turn, reveals the

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2. Value, of course, is contextual, based on recognition by a particular audience, and it varies as a result. See generally Carole Silver, *The Variable Value of U.S. Legal Education in the Global Legal Services Market*, 24 GEO. J. LEGAL ETHICS 1 (2011).

3. On the role of the Council in the accreditation process, see AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *THE LAW SCHOOL ACCREDITATION PROCESS* 1, 3 (2013), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/2013\\_revised\\_accreditation\\_brochure\\_web.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_revised_accreditation_brochure_web.authcheckdam.pdf).

4. See generally *id.*

5. The discussion regarding recognition of foreign legal education arose in the context of considering bar eligibility for individuals who earned a first degree in law outside of the United States and subsequently earned an LL.M. or similar one-year postgraduate degree in an ABA-approved law school (hereinafter referred to as “international law graduates”). See *infra* notes 79–95 and accompanying text (discussing draft model rules).

effects of globalization on the U.S. regulatory regime, where the power of the Council as the domestic regulator is fraying.<sup>6</sup> Despite its intention to avoid the forces of globalization, these global actors have infiltrated the regime within the Council's jurisdiction and, in turn, contribute to the dilution of its power.

This Article offers a case study of globalization's role in the fragmentation of power. Part I provides a brief description of particular aspects of globalization's influence and role in U.S. legal education, including the importance of international law graduates, relationships with foreign law schools, and overseas activities pursued by U.S. law schools. Part II explores the context for the Council's formal decisions to refrain from advancing to a global regulatory role with regard to foreign law schools and international law graduates and considers the influence exerted by various other organizations (based both within and outside of the United States). In Part III, the focus shifts to the efforts of global actors to obtain support for their claims to legitimacy apart from their overtures to the Council. These global actors have contributed to the fraying of the Council's power, which is discussed in Part IV. The pursuit by global actors of alternative paths to legitimacy contributes to normalizing the rejection of ABA approval as the sole criteria for recognizing legal education's value in preparing to join the profession. Finally, the Conclusion suggests that maintaining tight control to the exclusion of global actors may eventually contribute to the Council losing its legitimating authority domestically.

### I. GLOBAL FORCES IN U.S. LEGAL EDUCATION

Scholars consider the United States to be leading the competition in "exporting its model of legal education, especially to emergent markets such as China and India."<sup>7</sup> Relevant interactions in this competition occur

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6. Examples of those questioning the Council, particularly on issues related to its oversight of law school reporting on employment statistics, include Senators Barbara Boxer, Charles Grassley, and Tom Coburn. See Press Release, Senator Barbara Boxer, Boxer Urges American Bar Association To Take Stronger Steps To Protect Law School Students (Oct. 6, 2011), available at <http://www.boxer.senate.gov/en/press/releases/100611b.cfm>; Joe Palazzolo, *Congress Gives Law Schools the Stink Eye*, WALL ST. J. L. BLOG (Nov. 14, 2011, 9:16 AM), <http://blogs.wsj.com/law/2011/11/14/congress-gives-law-schools-the-stink-eye>; see also Mark Greenbaum, Letter to the Editor, *No More Room at the Bench*, L.A. TIMES, Jan. 8, 2010, at A27 ("Part of the problem can be traced to the American Bar Assn., which continues to allow unneeded new schools to open and refuses to properly regulate the schools, many of which release numbers that paint an overly rosy picture of employment prospects for their recent graduates. . . . The ABA cites antitrust concerns in refusing to block new schools, taking a weak approach to regulation. For example, in 2008 the ABA created an accreditation task force to study the need for changes . . . . The task force also raised the possibility that if the ABA gave up its accreditation authority, the Federalist Society, a conservative-leaning interest group, could take over that job."); Ashby Jones, *Should the ABA Regulate Law Schools More Forcefully?*, WALL ST. J. L. BLOG (Jan. 8, 2010, 9:40 AM), <http://blogs.wsj.com/law/2010/01/08/should-the-aba-regulate-law-schools-more-forcefully/> (commenting on Greenbaum's letter).

7. John Flood, *Legal Education in the Global Context: Challenges from Globalization, Technology and Changes in Government Regulation* 32 (Univ. of Westminster Sch. of Law,

at a micro level through the experiences of international law graduates in U.S. graduate programs<sup>8</sup> and at a macro level as U.S. legal education serves as a model for reforming the structure and approach of educating lawyers outside of the United States.<sup>9</sup>

At the heart of the United States' strength is the role that legal education plays in the lawyer licensing regime.<sup>10</sup> Despite the lack of a national bar, every jurisdiction in the United States recognizes graduation from an ABA-approved law school with a three-year J.D. degree as providing a basis for bar eligibility. It is the only nationally recognized path to joining the legal profession in the United States,<sup>11</sup> and it is a byproduct of a longstanding, informal partnership between the ABA and the state lawyer regulatory bodies. This partnership involves, on one hand, recognition by the state lawyer regulatory and admission bodies of the power of the Council over the law school approval process and, on the other, reflects the fundamental support for state control over lawyer licensing and regulation on the part of the ABA and its Section of Legal Education and Admissions to the Bar (the Section), the representational sister of the Council's regulatory role.<sup>12</sup> John

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Research Paper No. 11-16, 2011), available at <http://ssrn.com/abstract=1906687>; see also Manuel A. Gómez, *La Grama del Vecino No Siempre Es Mas Verde* [The Neighbor's Grass Is Not Always Greener], in INNOVACIONES EN LA EDUCACIÓN JURÍDICA LATINOAMERICANA (Manuel A. Gómez & Rogelio Pérez-Perdomo eds., 2d ed. forthcoming 2014) (manuscript at 1) (on file with *Fordham Law Review*) (describing the influence of U.S. legal education on the development of new global graduate-level legal education programs in Latin America). See generally Setsuo Miyazawa et al., *The Reform of Legal Education in East Asia*, 4 ANN. REV. L. & SOC. SCI. 333 (2008) (describing the various ways in which the U.S. legal education influenced reform in China, Japan, and Korea).

8. See Flood, *supra* note 7, at 7, 9; Miyazawa et al., *supra* note 7, at 334–36 (describing the influence of studying in the United States on Chinese reformers).

9. See Flood, *supra* note 7, at 9; Carole Silver, *Book Review*, 61 J. LEGAL EDUC. 691, 696 (2012) (reviewing LEGAL EDUCATION IN ASIA: GLOBALIZATION, CHANGE AND CONTEXTS (Stacey Steele & Kathryn Taylor eds., 2011)).

10. This relates to what Richard Abel and others have described as the “professional project,” meaning the legal profession’s attempt to gain and maintain control over “the production of and by producers.” Abel, *supra* note 1, at 2 (describing the conceptual framework developed by Magali Larson).

11. NAT’L CONFERENCE OF BAR EXAM’RS & AM. BAR ASS’N SECTION OF LEGAL EDUC. AND ADMISSION TO THE BAR, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2014, at 8 (2014), available at [http://www.ncbex.org/assets/media\\_files/Comp-Guide/CompGuide.pdf](http://www.ncbex.org/assets/media_files/Comp-Guide/CompGuide.pdf) [hereinafter COMPREHENSIVE GUIDE]. Certain states recognize alternative paths to bar eligibility, and in at least one jurisdiction, graduation from a law school in the state suffices for admission without examination. See *Diploma Privilege 2014*, WIS. CT. SYS. (Oct. 3, 2013), <http://www.wicourts.gov/services/attorney/bardiploma.htm>.

12. See *About Us*, A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO B., [http://www.americanbar.org/groups/legal\\_education/about\\_us.html](http://www.americanbar.org/groups/legal_education/about_us.html) (last visited Apr. 26, 2014) (“The Section’s Council and Accreditation Committee are recognized by the U.S. Department of Education (DOE) as the national accrediting agency for programs leading to the J.D. In this function, the Council and the Section are independent of the ABA, as required by DOE regulations. All state supreme courts recognize ABA-approved law schools as meeting the legal education requirements to qualify for the bar examination; forty-six states limit eligibility for bar admission to graduates of ABA-approved schools.”); see also *Resolution 12: In Support of the American Bar Association As the Accrediting Authority for Legal Education in the United States*, CONF. CHIEF JUSTICES (July 25, 2012), <http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/06252012-Support-American->

Flood characterizes this structure of the U.S. system as “monocentric,” and contrasts it to the United Kingdom’s polycentric regime (also shared by other countries<sup>13</sup>), in which legal education is but one of several avenues to becoming a lawyer.<sup>14</sup>

The Council has served in the regulatory oversight role regarding approval of law schools since approximately 1920;<sup>15</sup> earlier, it was the Section itself that oversaw recognition of this combination of law school and bar examination as the foundation for the lawyer licensing regime.<sup>16</sup> When the Section pressed for mandatory legal education, “in the last part of the nineteenth century, . . . standardization was a national watchword, not only in the profession but throughout industry and commerce. . . . [A]lmost all were adamant that a uniform type of law school should control entry to

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Bar-Association-Accrediting-Authority-Legal-Education-US.ashx; James P. White, *The American Bar Association Law School Approval Process: A Century Plus of Public Service*, 30 WAKE FOREST L. REV. 283, 286–87 (1995) (noting that the Section pressed the ABA House of Delegates to support a conference for the Section and state bar authorities “for the purpose of uniting the bodies . . . in an effort to create conditions favorable to the adoption of the principles” of mandatory legal education in an approved law school as a condition to bar admission).

Several states allow graduates of law schools not approved by the ABA to sit for their bar under certain circumstances, and others consider graduates of programs other than the J.D. as bar eligible under certain circumstances. See *infra* notes 99–107 for further discussion. On the representation and regulatory roles with regard to the legal profession generally, see Laurel S. Terry, *The European Commission Project Regarding Competition in Professional Services*, 29 NW. J. INT’L L. & BUS. 1, 5 n.14, 6 n.19 (2009). See also COUNCIL OF BARS AND LAW SOC’YS OF EUR., CCBE POSITION ON REGULATORY AND REPRESENTATIVE FUNCTIONS OF BARS 5 (2005), available at [http://www.ccbe.eu/fileadmin/user\\_upload/NTCdocument/ccbe\\_position\\_on\\_reg1\\_1182254709.pdf](http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/ccbe_position_on_reg1_1182254709.pdf).

13. See, e.g., *The Japanese Attorney System*, JAPAN FED’N B. ASSOCIATIONS, [http://www.nichibenren.or.jp/en/about/judicial\\_system/attorney\\_system.html](http://www.nichibenren.or.jp/en/about/judicial_system/attorney_system.html) (last visited Apr. 26, 2014) (“Japan will also institute another system under which candidates will be able to sit for the bar examination by passing a preliminary test even if they have not completed law school.”).

14. Flood, *supra* note 7, at 15–17.

15. The Council was created in 1917 as part of the existing Committee on Legal Education and Admissions to the Bar, in response to pressure from the Association of American Law Schools to follow the model of controlling medical schools by the Council on Medical Education and the American Medical Association; it was subsequently recognized as a separate entity in 1919. See ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S*, at 114–15 (1983). By 1920, the “ABA was called on to invest the Council on Legal Education with the power to accredit schools.” *Id.* at 115; see also John Henry Schlegel, *Between the Harvard Founders and the American Legal Realists: The Professionalization of the American Law Professor*, 35 J. LEGAL EDUC. 311, 314 (1985) (noting parallels between law and other social science disciplines regarding the creation by “a small group of scholars . . . [of] an academic discipline where none had been before”).

16. See STEVENS, *supra* note 15, at 114–15; see also RICHARD L. ABEL, *AMERICAN LAWYERS* 46–48 (1989); Schlegel, *supra* note 15, at 313–14 (describing the role of full-time law faculty in promoting their value in approved law schools); White, *supra* note 12, at 283–86 (noting that the Section was authorized in 1893 by resolution of the Committee on Legal Education and Admissions to the Bar, which had been created by the ABA at its organizational meeting in 1878).

the profession.”<sup>17</sup> Today, the pendulum has swung away from standardization; rather, variety and experimentation have become the goals for reform in the United States.<sup>18</sup>

The market for law students and new law graduates was decidedly domestic when the accreditation regime and its partnership with state bar authorities initially was developed. Today, globalization occupies an important role in U.S. legal education, as it does in law and the U.S. legal profession generally.<sup>19</sup> The “production of” lawyers is no longer simply a national enterprise. Rather, there is a growing market for legal services that reaches beyond national boundaries. Inherent in this market is intense competition over claims to being the legitimate producer of those credentials and experiences necessarily characteristic of “global lawyers.”<sup>20</sup> U.S. law schools have invested significantly in this competition, and for some, their success may determine their ability to withstand the current financial challenges.

Law schools compete in a global market for students, experiential learning opportunities, prospective employers for their graduates, faculty, relationships, and prestige.<sup>21</sup> Each of these elements of competition has global characteristics. For example, international students comprise an

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17. STEVENS, *supra* note 15, at 92. “At its first meeting in 1879, the ABA Committee on Legal Education and Admissions to the Bar not only urged national comity for lawyers of three years standing—its original chore—but it began the crusade for an expansive program for standardization.” *Id.* at 93; *see also* Schlegel, *supra* note 15, at 322 (“Great effort went into developing the law school’s equivalent of the Model T. Enormous amounts of thought and pages of print were devoted to such matters as standardization of credits, standardization of degrees, and standardization of examinations.”). Schlegel also describes the contest over whether to emphasize the teaching of local law or of legal reasoning, the latter itself a mechanism of standardization. Schlegel, *supra* note 15, at 324–25.

18. AM. BAR ASS’N TASK FORCE ON THE FUTURE OF LEGAL EDUC., DRAFT REPORT AND RECOMMENDATIONS 2 (2013), *available at* [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/taskforcecomments/task\\_force\\_on\\_legaleducation\\_draft\\_report\\_september2013.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/taskforcecomments/task_force_on_legaleducation_draft_report_september2013.authcheckdam.pdf) (“The system of accreditation administered by the ABA Section of Legal Education and Admissions to the Bar . . . reinforces a far higher level of standardization in legal education than is necessary to turn out capable lawyers. . . . The Task Force concludes that the Standards [for Approval of Law Schools] would better serve the public interest by enabling more heterogeneity in law schools and by encouraging more attention to services, outcomes, and value delivered to law students. . . . The ABA accreditation system should also better facilitate innovation in law schools and programs of legal education.”).

19. *See* Flood, *supra* note 7, at 32–33. *See generally* Laurel S. Terry, *The Legal World Is Flat: Globalization and Its Effect on Lawyers Practicing in Non-global Law Firms*, 28 NW. J. INT’L L. & BUS. 527 (2008).

20. *See supra* note 7 and accompanying text. *See generally* Carole Silver, *Getting Real About Globalization and Legal Education: Potential and Perspectives for the U.S.*, 24 STAN. L. & POL’Y REV. 457 (2013).

21. *See, e.g.*, Nicholas Barnabo, *Georgetown Law Deans React to Decline in Law School Applications*, GEO. L. WKLY. (Feb. 26, 2013), <http://www.gulawweekly.org/news/2013/2/26/georgetown-law-deans-react-to-decline-in-law-school-applicat.html> (“In interviews with the Law Weekly, the Georgetown Law administration emphasized the continuous efforts the school is expending to raise Georgetown Law’s standing internationally . . .”). *See generally* Laurel Terry, *International Initiatives That Facilitate Global Mobility in Higher Education*, 2011 MICH. ST. L. REV. 305.

increasing proportion of entering classes.<sup>22</sup> Most international students enroll in one-year postgraduate degree programs that serve to complement, rather than duplicate, their first degree in law from their home country. Recordkeeping regarding enrollment patterns of international law graduates has been spotty, but estimates based on bar admission statistics reveal that more than 8 percent of all bar exam test takers in July 2012 earned their primary legal education outside of the United States.<sup>23</sup> Moreover, in the period from 2000 to 2012, graduate law programs grew by more than 50 percent, although this figure also includes programs not limited to international students.<sup>24</sup> International students also comprise a larger proportion of J.D. applicants than was the case a decade ago, although they still account for only a small percentage of J.D. students, typically well under 5 percent of the entering class.<sup>25</sup> Nevertheless, a quick Google search reveals substantial interest by schools in attracting international J.D. applicants; a wide variety of law schools provide information that specifically addresses this potential pool of students.<sup>26</sup> And as the potential

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22. See Carole Silver, *Holding Onto "Too Many Lawyers": Bringing International Graduate Students to the Front of the Class*, 3 OÑATI SOCIO-LEGAL SERIES 533, 540 (2013).

23. 2012 Statistics, B. EXAMINER 11, [http://www.ncbex.org/assets/media\\_files/Bar-Examiner/articles/2013/8201132012statistics.pdf](http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2013/8201132012statistics.pdf) (last updated Apr. 11, 2013). Seven percent of bar exam test takers earned their legal education outside of the United States in 2011. See Carole Silver, *Coping with the Consequences of "Too Many Lawyers": Securing the Place of International Graduate Law Students*, 19 INT'L J. LEGAL PROF. 227, 231 (2012) ("According to the National Conference of Bar Examiners, in 1996, at the beginning of the period of growth of graduate US law school programs for international law graduates, 2.2 percent (1,589 individuals) of the individuals who sat for a US bar exam earned their legal education outside of the United States; by 2011, 7.1 percent (5,620 individuals) of all bar exam test-takers earned their legal education outside of the United States." (citations omitted)).

24. Silver, *supra* note 23, at 231 ("US graduate programs for international lawyers have grown substantially since the mid-1990s, both in number of schools offering such programs and number of students enrolled. This reflects a general growth in non-J.D. program enrollment; according to the ABA (2012), 'ABA-approved law schools reported a 39 percent increase in enrollment in non-J.D. programs from 2005 to 2012 and a 52 percent increase from 2000 to 2012.'" (citations omitted)).

25. See *Apply to Georgetown Law*, GEO. L., <http://www.law.georgetown.edu/admissions-financial-aid/> (last visited Apr. 26, 2014) (describing one of the most international student bodies); *LL.M. Program*, HARV. L. SCH., <http://www.law.harvard.edu/academics/degrees/gradprogram/llm/> (last visited Apr. 26, 2014) (same).

26. See, e.g., *For International Students*, U. CAL. BERKELEY L. SCH., <http://www.law.berkeley.edu/51.htm> (last visited Apr. 26, 2014); *Foreign Educated Applicants*, ARIZ. ST. U. SANDRA DAY O'CONNOR C.L., <http://www.law.asu.edu/admissions/Admissions/HowToApply/ForeignEducatedApplicants.aspx> (last visited Apr. 26, 2014); *Frequently Asked Questions for International J.D. Applicants*, HARV. L. SCH., <http://www.law.harvard.edu/prospective/jd/apply/international-applicants/intlfaq.html> (last visited Apr. 26, 2014) (including a frequently asked question about the value of a J.D. to a non-U.S. applicant: "What use would a J.D. degree be to a non-U.S. citizen? There are many possible and distinct answers to this question. They all stem from the fact that the Harvard Law J.D. degree program is one of the most internationally renowned and respected courses in the world. In addition, the HLS curriculum has generous offerings in international and comparative law. With a Harvard Law degree, a person would likely have many opportunities to live and work in the US on a green card. Although some governmental departments have citizenship requirements, many law firms are more than willing to hire non-U.S. citizens."); *International Applicants*, YALE L. SCH., <http://www.law.yale.edu/>



applicant pool among domestic students dwindles, interest in international students likely will heat up.<sup>27</sup>

Law schools also vie for attention from organizations situated outside of the United States that might employ their graduates or serve as sites for externships during law school—or both. While job opportunities outside of the United States currently are scarce, global firms nevertheless routinely recruit at U.S. law schools for their U.S. offices, and in some circumstances also offer opportunities to U.S. students to work overseas.<sup>28</sup> International externships, on the other hand, increasingly are used to satisfy student demand for experiential education and add to the variety of opportunities schools offer their students.<sup>29</sup>

U.S. law schools also compete with one another over relationships with non-U.S. law schools in order to provide summer or semester-long programs for their current students<sup>30</sup> and as the basis for dual and joint

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admissions/5355.htm (last visited Apr. 26, 2014); *International J.D. Applicants*, IIT CHI-KENT C.L., <http://www.kentlaw.iit.edu/prospective-students/jd-program-admissions/first-year-application-procedure/international-jd-applicants> (last visited Apr. 26, 2014) (including information regarding advanced standing granted on the basis of home country legal education); *International J.D. Students*, U. CIN. C.L., <http://law.uc.edu/international/jd-students> (last visited Apr. 26, 2014); *J.D. for Foreign Lawyers: J.D. with Advanced Standing*, FLA. INT'L U. L. SCH., <http://law.fiu.edu/academic-information/international-and-graduate-studies-2/jd-for-foreign-lawyers-jd-with-advanced-standing/> (last visited Apr. 26, 2014) (including information on advanced standing granted on the basis of home country legal education); *Law Admissions*, LEWIS & CLARK L. SCH., [http://law.lclark.edu/offices/admissions/apply/jd\\_requirements\\_international/](http://law.lclark.edu/offices/admissions/apply/jd_requirements_international/) (last visited Apr. 26, 2014); *Two-Year J.D. for International Lawyers*, NW. U. L. SCH., <http://www.law.northwestern.edu/academics/jd/jd2.html> (last visited Apr. 26, 2014) (including information on the two-year J.D. for international law graduates).

27. See generally Silver, *supra* note 22.

28. Several global law firms based outside of the United States regularly participate in on-campus interview programs at certain law schools. See, e.g., *London Summer Associate Program FAQs*, FRESHFIELDS, BRUCKHAUS, DERINGER, [http://www.freshfields.com/en/united\\_states/careers/graduates/London\\_summer\\_associate\\_program\\_-\\_FAQs/](http://www.freshfields.com/en/united_states/careers/graduates/London_summer_associate_program_-_FAQs/) (last visited Apr. 26, 2014) (describing the opportunity for U.S. summer associates to work in London). In addition, there is some evidence of J.D. recipients working initially outside of the United States, even in the current job market. See *Additional Employment Data*, HARV. L. SCH., <http://www.law.harvard.edu/current/careers/ocs/employment-statistics/additional-employment-data.html> (last visited Apr. 26, 2014) (finding that 3.35 percent of 2012 graduates, 2.87 percent of 2011 graduates, and 3.05 percent of 2010 graduates worked outside of the United States).

29. On externship opportunities, see, for example, *International Externship*, AM. U. WASH. C.L., <http://www.wcl.american.edu/externship/international.cfm> (last visited Apr. 26, 2014) (“Students can earn academic credit while performing fieldwork outside of the United States in NGOs, government agencies, tribunals, and law firms engaged in pro bono work.”); *Study Abroad*, IND. U. MAURER SCH. L., <http://law.indiana.edu/students/abroad/index.shtml> (last visited Apr. 26, 2014) (offering “students the opportunity to enhance their understanding of how law is practiced across various cultures”).

30. Adelaide Ferguson, who has studied overseas study opportunities in U.S. law schools, concluded, “It is not unreasonable to speculate that as many as 10 percent of the students in the national cohort of first-year law students of approximately 49,000—or 4,900 law students—go abroad sometime during their law school career.” ADELAIDE FERGUSON, MAPPING STUDY ABROAD IN U.S. LAW SCHOOLS: THE CURRENT LANDSCAPE & NEW HORIZONS 6–7 (2010), available at [http://www.nafsa.org/uploadedFiles/NAFSA\\_Home/](http://www.nafsa.org/uploadedFiles/NAFSA_Home/)

degrees that provide more intensive multinational education.<sup>31</sup> In addition, several U.S. law schools have developed degree programs based outside of the United States, some of which involve partner relationships with foreign schools.<sup>32</sup>

Reputations, too, are being framed in terms of global competition. New York University Law School is perhaps the most obvious example of an effort to contextualize in a global framework,<sup>33</sup> but many other schools also present themselves as globally focused and connected.<sup>34</sup> Schools engage in a variety of activities to buttress their global identities, from supporting their faculty in speaking and teaching overseas, to visits by deans to overseas law schools and alumni, to advertising in overseas media. At the same time, it is not clear how much weight is accorded directly to such

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Resource\_Library\_Assets/Networks/CCB/MappingStudyAbroadLaw.pdf. Ferguson also states,

The vast majority of . . . law schools [approved by the ABA in 2008–09] permit their students to study abroad and apply the credits earned to their law degrees. Of the 200 ABA-accredited law schools, 114 schools sponsor 267 summer, 11 semester, 49 cooperative, and 7 short-term intersession abroad programs—a total of 334 programs—for their own students and students from other schools. However, the . . . above figures do not include the large number of exchange programs and semester abroad programs hosted by foreign law schools, dual-degree programs, or courses and clinics offered at the home campus with embedded short-term foreign experiences, a type of study becoming increasingly common.

*Id.* at 6 (footnotes omitted).

31. See, e.g., *IU Maurer School of Law, India's Jindal Global Law School Announce New Educational Initiative*, IU NEWS ROOM (Feb. 20, 2012), <http://newsinfo.iu.edu/news/page/normal/21313.html> [hereinafter *New Educational Initiative*]; *LL.M. Singapore*, N.Y.U. L., <http://www.law.nyu.edu/llmjsd/llmsingapore> (last visited Apr. 26, 2014).

32. See, e.g., *Rule of Law in China*, TEMP. U. BEASLEY SCH. L., [http://www.law.temple.edu/pages/international/China\\_Program.aspx](http://www.law.temple.edu/pages/international/China_Program.aspx) (last visited Apr. 26, 2014) (partnering with Tsinghua University). According to the program brochure, “Graduates of the program receive a Master of Laws (LL.M.) degree from Temple and a Certificate of Completion from Tsinghua.” TEMPLE UNIV. BEASLEY SCH. OF LAW, MASTER OF LAWS PROGRAM: TEMPLE UNIVERSITY BEASLEY SCHOOL OF LAW AND TSINGHUA UNIVERSITY SCHOOL OF LAW (2014), available at [http://www.law.temple.edu/Documents/International\\_China%20Program/2013%20Beijing%20LLM%20Brochure.pdf](http://www.law.temple.edu/Documents/International_China%20Program/2013%20Beijing%20LLM%20Brochure.pdf). New York University’s former partnership with National University of Singapore was also an example. See *supra* note 31. This program has been discontinued, however. See *Program Update*, N.Y.U. L., <http://www.law.nyu.edu/llmjsd/llmsingapore/programupdate> (last visited Apr. 26, 2014).

33. See *Global Opportunities at NYU Law*, N.Y.U. L., <http://www.law.nyu.edu/global> (last visited Apr. 26, 2014) (“NYU Law’s offerings in international, comparative, and foreign law are unsurpassed.”).

34. See *Preparing Lawyers for Global Leadership*, IND. U. MAURER SCH. L., <http://law.indiana.edu/about/index.shtml> (last visited Apr. 26, 2014) (“The Maurer School of Law is the national leader in the study of the global legal profession, and we are using this research to transform our curriculum and produce the most prepared, educated and ethical lawyers in the world.”); *International Team Projects*, NW. L., <http://www.law.northwestern.edu/academics/itp/> (last visited Apr. 26, 2014) (“Northwestern has developed the International Team Project (ITP) course to prepare students for both public and private practice in the worldwide legal market.”); *Center for International Legal Education*, PITT LAW, <http://www.law.pitt.edu/academics/cile> (last visited Apr. 26, 2014) (“A *Global Approach*: Serving both American and foreign students, Pitt Law alumni, and the local legal community. CILE adds international substance to the study and practice of law in Pittsburgh.”).

efforts either on the part of the law schools or their intended audiences; the significance of the *U.S. News & World Report* rankings of U.S. law schools obfuscates efforts to assess the relative importance of these activities.<sup>35</sup>

It is not simply individual U.S. law schools that have relationships to a global framework, however. Both the system of legal education in the United States and the model of U.S. legal education as an ideal type have exerted an influence outside of the United States. In part, this is through the presence of U.S. law school international law graduates, who take with them lessons from their time in the United States as they pursue careers—often outside of the United States—and create the paths for influence these experiences might exert.<sup>36</sup> But on a broader level, the U.S. law school model has been adopted by national regimes of legal education as well as by particular foreign law schools. Of course, what the “U.S. model” conveys is not necessarily uniform, but hallmarks include its graduate level in the structure of higher education, the relationship of law school to bar eligibility, interactive teaching methods and clinical legal education, and the structure of the accreditation regime.<sup>37</sup> In Korea and Japan, for example, legal education was transformed from undergraduate- to graduate-level programs using the U.S. structure as the model.<sup>38</sup> Their new law school systems are attempting to shift the gatekeeping role from the bar exam to admission to law school, and have adopted requirements for English language expertise as well as clinical legal education.<sup>39</sup> In other jurisdictions where reform is not system-wide, individual foreign law schools have created graduate-level degree programs and use the J.D. degree title to support their graduates’ competition with graduates of U.S. law schools.<sup>40</sup> The Peking School of Transnational Law (STL) was

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35. Karin Fischer, *American Universities Yawn at Global Rankings; but Foreign Competitors Are Elbowing Their Way onto the Annual Lists*, CHRON. HIGHER EDUC. (Oct. 4, 2013), <http://business.highbeam.com/434953/article-1G1-351742960/american-universities-yawn-global-rankings-but-foreign> (describing U.S. universities as relatively indifferent to global rankings, preferring instead *U.S. News & World Report*, which ranks only U.S. entities).

36. Silver, *supra* note 2, at 17 (describing career trajectories); see also Michael D. Goldhaber, *They Rule the World: One-Year LL.M. Programs at U.S. Law Schools Are on the Rise Again, Attracting Fledgling Power Brokers from Around the World*, 27 AM. LAW. 91, 91 (2005) (noting the significance of the LL.M. degree).

37. Miyazawa et al., *supra* note 7; see also Yoshiharu Kawabata, *The Reform of Legal Education and Training in Japan: Problems and Prospects*, 43 S. TEX. L. REV. 419, 431 (2002) (“The Japanese plan to create new law schools closely follows an American model. We envision graduate schools that require three years of study, and we aim to make students think like lawyers and act like lawyers by using intensive, interactive teaching methods.”).

38. See Miyazawa et al., *supra* note 7, at 354; Hoyoon Nam, *U.S.-Style Law School (“Law School”) System in Korea: Mistake or Accomplishment?*, 28 FORDHAM INT’L L.J. 879 (2005); see also Thomas Chih-hsiung Chen, *Legal Education Reform in Taiwan: Are Japan and Korea the Models?*, 62 J. LEGAL EDUC. 32, 32–33 (2012) (discussing the “fierce debate” surrounding following an American model of legal education in Taiwan).

39. See Miyazawa et al., *supra* note 7, at 335 (describing the juris master (J.M.) degree in China).

40. The University of Melbourne was first in Australia to develop a graduate-level J.D. program, then under the leadership of University of Michigan law professor James Hathaway. See Hathaway, James C., MICH. L., <http://www.law.umich.edu/FacultyBio/>

developed under the direction of U.S. law school faculty and administrators along with Chinese colleagues, with the express aim of following a U.S. law school model. Classes are taught in English, with U.S. law as the substantive focus (along with Chinese law), by a faculty largely comprised of current and former members of U.S. law faculties.<sup>41</sup> A new school in Paris also conducts classes in English and is focused on teaching graduate level students, while at Bucerius Law School in Germany, courses in “Legal English” and “Anglo-American Law” are mandatory.<sup>42</sup>

The authority of the Council with regard to regulatory oversight is implicated in both the micro- and macro-level interactions that link U.S. and non-U.S. law students and schools. In order to generate the most value from their relationship with U.S. legal education, both benefit from the opportunity to capitalize on legal education’s role in bar admission—the monocentricness that distinguishes the U.S. system from that of many other countries. But this consequence of U.S. legal education is neither available to international law graduates, nor has it been extended to foreign law schools that attempt to model themselves along the lines of the United States, whether systemically, as in Korea and Japan, or as one-off efforts. This disconnect is explored in Part II, below.

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Pages/FacultyBio.aspx?FacID=jch (last visited Apr. 26, 2014) (“He was on leave from 2008 to 2010 to serve as dean of the Melbourne Law School, where he established Australia’s first all-graduate (J.D.) law program.”); *see also Why Choose the Melbourne Juris Doctor*, U. MELBOURNE, <http://www.law.unimelb.edu.au/jd/future-students/why-choose-the-melbourne-juris-doctor> (last visited Apr. 26, 2014) (“The Law School has led the shift to graduate law in Australia with the Melbourne J.D. program, which has been developed to teach law at a level that challenges and inspires graduate students.”). Other Australian universities followed. *See Juris Doctor*, AUSTRALIAN NAT’L U., <http://programsandcourses.anu.edu.au/program/7330XJD> (last visited Apr. 26, 2014); *UNSW J.D.*, UNSW AUSTRALIA, <http://www.law.unsw.edu.au/future-students/unsw-jd> (last visited Apr. 26, 2014).

41. In explaining the genesis of the school, its initial dean and chancellor Jeffrey Lehman described the awareness by then Vice President of Peking University Hai Wen, that the best graduates of China’s best law schools, including Beida, Renda, Fudan, and Tsinghua, were not being hired by multinational law firms unless they first went to the US or Canada and acquired further legal training. He wanted to understand why. And so he called me and came to visit me in New York. He asked me what was forcing China to—in his words—outsource the education of some of its finest young minds. He wanted to know whether Beida might be able to produce the same kind of education on domestic soil. And he wanted to know if I would be willing to help launch this school. . . . The State Council authorized STL to offer a degree that will be certified in the English Language as a J.D. degree, and mandating that the curriculum be developed by reference to the J.D. curriculum at American law schools.

Jeffrey S. Lehman, Senior Scholar, Woodrow Wilson Int’l Ctr. for Scholars, China’s First US-Style Law School: Five Narratives in Search of an Author (May 21, 2008), *available at* [http://www.lehman-intl.com/jeffreylehman/wilson\\_center\\_five\\_narrativ.html](http://www.lehman-intl.com/jeffreylehman/wilson_center_five_narrativ.html).

42. HAUTES ÉTUDES APPLIQUÉES DU DROIT, <http://www.ecolehead.fr/> (last visited Apr. 26, 2014); *Internationality*, BUCERIUS L. SCH., <http://www.law-school.de/partneruniversitaeten.html?&L=1> (last visited Apr. 26, 2014).

## II. SIDESTEPPING GLOBAL ENGAGEMENT

The growing connections of U.S. law schools to global actors, including international law graduates and foreign law schools, has not coincided with a shift in focus of the Council or the Section; instead, these groups have continued to concentrate on law schools physically located in the United States and their J.D. students. Two policies illustrate this emphasis and provide a useful backdrop for considering the role of globalization in the continuing power of both entities. This Part considers the decisions establishing these policies and the additional actors and influences that shaped them.

The first policy addresses the LL.M. as a potential path to bar eligibility for international law graduates. Early on in its work, the Council issued a Statement regarding the supremacy of the J.D. degree (Statement), which marginalized the LL.M. and other non-J.D. degrees.<sup>43</sup> The Council framed this marginalization in terms of its promotion of the exclusivity of the relationship between the J.D. degree and bar eligibility: "It is the Council's position that no graduate degree in law is or should be a substitute for the first professional degree in law (J.D.) and should not serve as the same basis as the J.D. degree does for bar admission purposes."<sup>44</sup> The Statement may have been adopted prior to 1981, but it does not appear in earlier published versions of the *ABA Standards and Rules of Procedure for Approval of Law Schools and Interpretations*. It certainly reflects earlier policy, however, related to the importance of the three-year degree as the basis for bar eligibility, which was the foundation of the enduring partnership between the Section and the state bar regulators.<sup>45</sup>

By the early 2000s, this Statement apparently seemed insufficient for purposes of emphasizing the primacy of the J.D. By then, many U.S. law schools had developed substantial LL.M. programs for international law graduates.<sup>46</sup> State bar authorities were receiving increasing numbers of applications for waivers of their rules from international law graduates who had secured jobs to work in the United States.<sup>47</sup> The Council's Statement appears to target that activity directly. Rather than supporting law schools

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43. On non-J.D. degrees generally, see the discussion of "Other than J.D. programs" in *Post-J.D. and Non-J.D. Programs*, A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO B., [http://www.americanbar.org/groups/legal\\_education/resources/llm-degrees\\_post\\_j\\_d\\_non\\_j\\_d.html](http://www.americanbar.org/groups/legal_education/resources/llm-degrees_post_j_d_non_j_d.html) (last visited Apr. 26, 2014).

44. This Statement first appeared in the 1981 version of the *ABA Standards and Rules of Procedure for Approval of Law Schools and Interpretations*; it is not possible to be sure when it was adopted because earlier versions of the published standards simply did not include the Council's "Adopted Policies of Statement and Procedure" where this Statement is housed. See AM. BAR ASS'N, STANDARDS AND RULES OF PROCEDURE FOR THE APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS (1981), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/standardsarchive/1981\\_standards.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/standardsarchive/1981_standards.authcheckdam.pdf).

45. See *supra* notes 15–16 and accompanying text.

46. See Carole Silver, *Internationalizing U.S. Legal Education: A Report on the Education of Transnational Lawyers*, 14 CARDOZO J. INT'L & COMP. L. 143, 147 (2006).

47. See *infra* note 66 (regarding Conference of Chief Justices of the State Supreme Courts (CCJ) Resolution 8).

that were attempting to draw on the link between U.S. legal education and bar eligibility to build the legitimacy of their LL.M. programs in the eyes of international law graduates, the Council took the opposite position. It went further, though, by also suggesting that the education provided to international law graduates is not comparable to that provided in a J.D. program, as indicated in the following portion of the Statement:

ABA approval does not extend to any program supporting any other degree granted by the law school. Rather the content and requirements of those degrees, such as an LL.M., are created by the law school itself and do not reflect any judgment by the ABA regarding the quality of the program. Moreover, admission requirements for such programs vary from school to school, and are not evaluated through the ABA accreditation process. The ABA Accreditation process does not evaluate in any way whether a school's post-J.D. degree program ensures that students in the program gain the basic knowledge and skills necessary to prepare the student adequately for the practice of law.<sup>48</sup>

In other words, the Council's Statement not only undermines any attempt to link the LL.M. to bar eligibility, which could relate simply to the duration of the LL.M. versus the J.D. In addition, it also negates any potential inference of comparability regarding the quality of the two degree programs. Law schools may well have hoped that their LL.M. programs would be perceived as offering exposure to the same classes, discussions, and ideas that form the core of the J.D. experience, and many law schools designed their programs to do just that. But the Statement undercuts any attempt by the schools to signal comparability.<sup>49</sup> To the extent this Statement was read by international law graduates and their potential employers, it had the potential to undermine the value of the LL.M. well beyond its disconnection from bar eligibility.

At the same time, however, as noted above, the LL.M. was recognized as providing a path to bar eligibility in New York, arguably the most significant U.S. jurisdiction for purposes of international commercial law.<sup>50</sup> And in spite of the Council's Statement, New York continued to

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48. See AM. BAR ASS'N, COUNCIL STATEMENTS 1 (n.d.), available at [http://www.americanbar.org/content/dam/aba/migrated/legaled/accreditation/Council\\_Statements.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/legaled/accreditation/Council_Statements.authcheckdam.pdf).

49. To be sure, the Section also did not have the technical authority from the Department of Education to accredit LL.M. programs. See *Accreditation in the United States: Specialized Accrediting Agencies*, ED.GOV, [https://www2.ed.gov/admins/finaid/accred/accreditation\\_pg7.html](https://www2.ed.gov/admins/finaid/accred/accreditation_pg7.html) (last visited Apr. 26, 2014) (listing the scope of recognition for the Section as: "Scope of recognition: the accreditation throughout the United States of programs in legal education that lead to the first professional degree in law, including those offered via distance education, as well as freestanding law schools offering such programs. This recognition also extends to the Accreditation Committee of the Section of Legal Education (Accreditation Committee) for decisions involving continued accreditation (referred to by the agency as "approval") of law schools.").

50. See N.Y. CT. APP. R. 520.6 (defining bar eligibility for graduates of foreign law schools). Earlier versions of Rule 520.6 were more flexible regarding certain factors, such as the substantive focus of U.S. law school courses. For the prior version of the Rule, see *Archived Rules: Rule § 520.6*, N.Y. ST. BOARD L. EXAMINERS, <http://www.nybarexam.org/Rules/3203-6archive.htm#520.6> (last visited Apr. 26, 2014).

acknowledge the legitimacy of a one-year U.S. law school experience when combined with home country legal education. In 2002 to 2003, when this Statement was adopted, approximately 25 percent of bar exam test takers in New York earned their primary legal education in a foreign law school.<sup>51</sup> Eight years earlier, in 1995, international law graduates accounted for slightly less than 13 percent of all bar exam test takers in New York.<sup>52</sup> The dramatic increase in the proportion of international graduates among those sitting for the New York bar—which has continued today with nearly 30 percent in 2012<sup>53</sup>—may well have been the stimulus for the Council’s revised and stronger Statement. But the resistance to change by New York and other U.S. jurisdictions in the face of the Council’s Statement reveals a fissure in the Council’s power to act as legitimator of U.S. law schools.<sup>54</sup>

Related to the substance of the Council’s Statement is the challenge of determining how best to assess the relevance of an international law graduate’s home country legal education in relation to bar eligibility in the United States. U.S. jurisdictions take a variety of approaches, including considering the duration of the home country legal education, whether it involved teaching common law, and whether it was conducted in English, among other factors.<sup>55</sup> The Council’s own rules also recognize foreign legal education in the context of allowing advance standing in law school admissions: Standard 507 authorizes law schools to grant credit for as much as one-third of the duration of the J.D. degree on the basis of education in another country, thus essentially allowing a two-year J.D. for applicants who completed their primary legal education outside of the United States.<sup>56</sup>

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51. See 2003 Statistics, B. EXAMINER, May 2004, at 9, available at [http://www.ncbex.org/assets/media\\_files/Statistics/2003stats.pdf](http://www.ncbex.org/assets/media_files/Statistics/2003stats.pdf).

52. See 1995 Statistics, B. EXAMINER, May 1996, at 27, available at [http://www.ncbex.org/assets/media\\_files/Bar-Examiner/articles/1996/650296\\_1995\\_Statistics.pdf](http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/1996/650296_1995_Statistics.pdf).

53. See 2012 Statistics, *supra* note 23, at 11.

54. The Council’s approach might be likened to that of U.S. automobile manufacturers in the middle of the last century, when it was impossible to imagine their loss of control over the U.S. auto market. See, e.g., Thomas H. Klier, *From Tail Fins to Hybrids: How Detroit Lost Its Dominance*, 33 ECON. PERSP. 2 (2009) (“From the mid-1950s through 2008, the Detroit automakers, once dubbed the “Big Three”—Chrysler LLC, Ford Motor Company, and General Motors Corporation (GM)—lost over 40 percentage points of market share in the United States, after having dominated the industry during its first 50 years.”).

55. Carole Silver, *Regulatory Mismatch in the International Market for Legal Services*, 23 NW. J. INT’L L. & BUS. 487, 508–09 (2003).

56. See AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2013–2013, at 40 (2013), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2013\\_2014\\_standards\\_chapter5.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_standards_chapter5.authcheckdam.pdf). Standard 507 and its first interpretive note reads:

APPLICANTS FROM FOREIGN LAW SCHOOLS

- (a) A law school may admit a student with advanced standing and allow credit for studies at a law school outside the United States if:
  - (1) the studies were ‘in residence’ as provided in Standard 304, or qualify for credit under Standard 305;

Other sources also address the notion of potential comparability of foreign and U.S. legal education. The market for new law graduates offers one example. U.S.-based law firms that hire new law graduates directly from law school essentially serve as signals of credibility and prestige for the law schools through their hiring decisions.<sup>57</sup> In the late 1990s through 2001, the largest U.S.-based firms, affectionately known as “Big Law,” began hiring graduates of foreign law schools to fill their ranks.<sup>58</sup> In part, this related to their growing international presence and their ability to place students in offices around the world, but the international hiring I focus on here was remarkable because it fed the firms’ U.S. offices. It was a period of substantial growth for the firms—domestically as well as internationally—and they faced significant competition from non-law firm employers, including technology companies and investment banks, which also sought to hire top graduates from highly ranked law schools.<sup>59</sup> Consequently, the firms began looking outside of the United States for additional new law graduates. Some recruited at Canadian law schools;<sup>60</sup> others looked to Australia.<sup>61</sup> These recruiting activities suggest an

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- (2) the content of the studies was such that credit therefore would have been granted towards satisfaction of degree requirements at the admitting school; and
  - (3) the admitting school is satisfied that the quality of the educational program at the foreign law school was at least equal to that required by an approved school.
- (b) Advanced standing and credit hours granted for foreign study may not exceed one-third of the total required by an admitting school for its J.D. degree.
- Interpretation 507-1: This Standard applies only to graduates of foreign law schools or students enrolled in a first degree granting law program in a foreign educational institution.

*Id.*

57. See generally Silver, *supra* note 2, at 11 (regarding a law firm’s signaling its prestige through the hiring of graduates of elite law schools).

58. See *infra* notes 59–60 and accompanying text.

59. On competition for law graduates from non-law firms, see Eric Herman, *Greed Is Good*, AM. LAW., Dec. 1997, at 68 (“While consulting firms have recruited at law schools for years, the investment banks are just starting to reappear.”). On growth generally, see *Growth Is Dead, Part 5—Innovation?*, ADAM SMITH, ESQ. (Oct. 2, 2012), <http://www.adamsmithesq.com/2012/10/growth-is-dead-part-5/> (“From more or less 1980 until approximately September 15, 2008, the industry of BigLaw enjoyed an unprecedented run of growth in revenue, profitability, and headcount, with compound annual growth rates in the middle to high single digits for virtually that entire period, with only the occasional hiccup.”).

60. Carole Silver, *The Case of the Foreign Lawyer: Internationalizing the U.S. Legal Profession*, 25 FORDHAM INT’L L.J. 1039, 1074 n.103 (2002) (“Among the U.S. law firms that recruit at Canadian law schools as part of their scheduled fall recruiting activities are Cleary Gottlieb, Clifford Chance (Rogers & Wells), Davis Polk & Wardwell, Dewey Ballantine, Shearman & Sterling, Sidley Austin Brown & Wood, and Simpson Thacher & Bartlett, all of which have scheduled on-campus interviewing dates at McGill for the fall of 2001. All but Clifford Chance also interviewed at the University of Toronto and Osgoode Hall.”).

61. *Id.* at 1075 n.104 (“In the past two years, top U.S. firms have imported at least three dozen Aussie laterals, with the vast majority stationed in New York. Davis Polk & Wardwell and Milbank, Tweed, Hadley & McCloy now have eight Australian associates apiece. Sullivan & Cromwell has six, along with a lone New Zealander. Shearman &



assessment of comparability, too, between English-speaking common law legal education in the United States and elsewhere.<sup>62</sup>

The influx of international law students into U.S. law schools and of graduates of foreign law schools into Big Law during this period also led to a growing practice of petitioning state supreme courts to recognize non-U.S. legal education credentials and waive restrictive bar rules.<sup>63</sup> At the same time, state bar authorities were asked by the ABA to review their lawyer regulatory provisions under the General Agreement on Trade in Services.<sup>64</sup> Together, these events, among others, served as a backdrop for a discussion among the state supreme courts—the ultimate regulators of lawyer licensing—of the need for guidance in assessing foreign legal education in the context of bar admission decisions. The Conference of Chief Justices of the State Supreme Courts (CCJ), an organization founded

to provide an opportunity for the highest judicial officers of the states to meet and discuss matters of importance in improving the administration of justice, rules and methods of procedure, and the organization and operation of state courts and judicial systems, and to make recommendations and bring about improvements on such matters[.]<sup>65</sup>

looked to the Section for guidance. Citing the “increasing number of lawyers who received their legal education and who have been admitted to practice in other nations [and who] are applying to sit for the bar examination in states around the United States” and the need for guidance on assessing the quality of foreign legal education, the CCJ asked the Section to “develop[] and implement[] a program to certify the quality of the legal education offered by universities in other common-law countries.”<sup>66</sup> Adopted in early 2007, this resolution contributed to spurring

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Sterling expects to have 11 Australians on board by this fall.” (quoting Margery Gordon, *G'Day*, *New York*, 22 AM. LAW. 21, 21 (2000)).

62. See Catherine Williams, *Foreign Exchange: Push Is on for Bar Exam Guidelines*, BOS. BUS. J. (Aug. 4, 2008, 12:00 AM), <http://www.bizjournals.com/boston/stories/2008/08/04/focus7.html?page=all> (discussing the push for revising Massachusetts's rules on bar eligibility and admission of foreign educated law graduates).

Jim Stokes, partner at Bingham McCutchen LLP, said foreign lawyers who can practice law in the United States are valuable to local companies that do business overseas. They bring expertise in foreign employment law, capital markets and civil code law, he said. Stokes said there is a “strong and legitimate case” for an expansion of the rules.

*Id.*

63. See Carole Silver, *States Side Story: Career Paths of International LL.M. Students, or “I Like To Be in America,”* 80 FORDHAM L. REV. 2383, 2422 (2012) (describing the need for a waiver in order to sit for the bar in Illinois).

64. See, e.g., ILL. STATE BAR ASS'N, FINAL REPORT FROM THE ILLINOIS STATE BAR ASSOCIATION (ISBA) TO THE SUPREME COURT OF ILLINOIS ON THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS) 4 (2005) (“The ABA is encouraging states to review the ABA rules addressing foreign legal consultants, multijurisdictional practice and pro hac vice admission in light of GATS . . .”).

65. CONF. CHIEF JUSTICES, <http://ccj.ncsc.org/> (last visited Apr. 26, 2014).

66. *Resolution 8: Regarding Accreditation of Legal Education in Common Law Countries by the ABA Section on Legal Education and Admission to the Bar*, CONF. CHIEF JUSTICES (Feb. 7, 2007), <http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/>

a discussion within the Council about its willingness and capacity to assess and even accredit foreign law schools, the second policy that highlights the relationship of globalization to the Council's role.<sup>67</sup>

At least two other forces exerted influence on the Council's consideration of its potential to serve as accreditor of overseas law schools, one directly and the other indirectly. The direct force came from STL, a new law school in Shenzhen, China. STL welcomed its initial entering class in the fall of 2008 and was initially led by Jeffrey Lehman, former president of Cornell University and dean and professor of law at the University of Michigan Law School. As intended by STL's founders, Lehman modeled the school after the U.S. legal education system that he knew so intimately.<sup>68</sup> According to Lehman, the school was conceived to respond to the concern that the best young Chinese lawyers working in China had to leave home for law school to be hired by elite firms; instead of (or in addition to) studying in China, they were required to earn their legal education in the United States in order to be attractive to elite firms.<sup>69</sup> STL aimed to offer Chinese students an equivalent experience to what they would have in a U.S. law school, but in China. However, it was not simply legal education that was significant to young Chinese lawyers aiming to work in global law firms; bar admission in the United States also was critical to their ability to

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02072007-Accreditation-Legal-Education-Legal-Education-and-Admission-to-the-Bar.ashx. The Agreement states:

WHEREAS, there is a growing interest in transnational legal practice by both American lawyers and lawyers in other nations; and

WHEREAS, an increasing number of lawyers who received their legal education and who have been admitted to practice in other nations are applying to sit for the bar examination in states around the United States; and

WHEREAS, graduation from an ABA-accredited law school is now one of the requirements for admission to practice in most states; and

WHEREAS, some state supreme courts are not authorized to waive this requirement; and

WHEREAS, state supreme courts and state bar admissions committees are not able to easily assess the quality of the legal education provided by law schools in other nations, even those that share the common-law tradition with the United States; and

WHEREAS, the American Bar Association Section on Legal Education and Admission to the Bar has developed expertise and an effective and reliable procedure for assessing the quality of the legal education provided by law schools in the United States;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices urges the American Bar Association Section on Legal Education and Admission to the Bar to consider developing and implementing a program to certify the quality of the legal education offered by universities in other common-law countries.

*Id.* The CCJ simultaneously adopted Resolution 7. *See infra* note 77.

67. This resolution eventually was rescinded by the CCJ in 2011. *See* Laurel S. Terry, *Transnational Legal Practice (United States)*, 47 INT'L LAW. 499, 506 n.50 (2013).

68. *See* Jeffrey S. Lehman, Dean, Sch. of Transnational Law, More Drops, More Buckets: What a More Integrated Transnational Legal Profession Implies for U.S. Law Schools (May 30, 2009), available at <http://www.lehman-intl.com/jeffreylehman/speeches/Isac-keynote-5-30-09-bookle.pdf> (describing the intentional modeling of STL on U.S. legal education).

69. *See* Lehman, *supra* note 41.

secure positions with these firms. Because China requires Chinese-licensed lawyers to effectively relinquish their practice certificates upon joining a foreign law firm's office in China, there is a premium on bar admission outside of China.<sup>70</sup> Consequently, Lehman sought not only to offer the substance of U.S. legal education but also to gain its effect in the regulatory context by qualifying graduates of STL's J.D. program for bar eligibility in the United States.<sup>71</sup> He pursued this goal by preparing to apply for accreditation for STL, and in this way presented squarely the issue of the Council's willingness to extend its jurisdiction beyond the physical boundaries of the United States.<sup>72</sup>

The indirect force on the issue of serving as an accreditor for foreign law schools was exerted by Australia. In the mid-2000s, the Law Council of Australia sought to qualify Australian legal education as a path to bar eligibility in the United States.<sup>73</sup> They presented their effort in terms of "seek[ing] the removal of unnecessary restrictions which confront Australian lawyers seeking to practice in U.S. jurisdictions or who are seeking admission to practice in the United States."<sup>74</sup> They pursued their mission by reaching out to several groups in the United States, including members of the ABA Section of International Law, arguing that their system of legal education and accreditation was substantially similar to the U.S. regime.<sup>75</sup> In addition, they went straight to the source of power regarding bar regulation and approached the CCJ. There, they found a ready audience. One member of the CCJ committee who heard their presentation described the CCJ as being "swept off its feet" by the

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70. See Silver, *supra* note 2, at 34 n.126 (explaining that foreign law firms may not practice local law in China, and Chinese-licensed lawyers must "mothball" their practice certificates when working for a foreign law firm).

71. It is important to note that the goal was to gain bar eligibility because of its effect in China, not for purposes of accessing the U.S. domestic market. This is typical in the sense that international law graduates, too, assess the value of U.S. legal education and the bar in the context of their home country framework. See *id.*

72. See Anthony Lin, *ABA Accreditation for Law School in China Runs Up Against U.S. Job Fears*, LAW.COM (May 24, 2011), <http://www.alm.law.com/jsp/article.jsp?id=1202494947655&rss=newswire&hbxlogin=1&slreturn=20140229101414>; Katherine Mangan, *U.S.-Style Law School in China Won't Be Considered for ABA Accreditation*, CHRON. HIGHER EDUC. (Aug. 6, 2012), <https://chronicle.com/article/ABA-Says-It-Wont-Accredit-Law/133387/> ("The school's request to be considered for ABA accreditation created bitter divisions in legal-education circles. Supporters said it made sense in light of the globalization of the legal profession, while critics said it would create headaches for the ABA and unwanted competition for American law students who are already facing dismal job prospects.").

73. Conference of Chief Justices, Meeting Minutes of the Professionalism and Competence of the Bar Committee 2 (July 31, 2006) (on file with *Fordham Law Review*).

74. *Id.*

75. Terry, *supra* note 67, at 848. ("In May 2006 in Washington D.C., representatives from the U.S. and Australian governments, bar associations, and lawyer regulatory organizations met to discuss lawyer regulatory issues. In addition, the Australian government and the Law Council of Australia demonstrated a strong interest in making U.S. jurisdictions more accessible to Australian lawyers through visits by delegates to meet with the Conference of Chief Justices (CCJ) and representatives from the highest courts in Georgia, Delaware, New York, and California." (footnotes omitted)).

Australians.<sup>76</sup> At the same time that the CCJ adopted its resolution asking the Section to certify foreign legal education, it also resolved to urge each state bar authority to authorize as bar eligible in their jurisdiction any Australian law graduates who had been admitted to practice in Australia.<sup>77</sup> While the Australian resolution is not specifically about accreditation, it raised the issue of equivalence between legal education earned outside of the United States and in an ABA-approved law school.<sup>78</sup> The CCJ, through its recommendation, was pressing the reform agenda of those who had much to gain from such an appraisal.

These two issues—whether to certify a program of U.S. legal education other than a J.D. as relevant for bar eligibility when combined with an international law graduate’s home country legal education, and the appraisal under the U.S. accreditation regime of legal education earned outside of the United States—were referred to a Special Committee on International Issues (SCII)<sup>79</sup> created by the Section.<sup>80</sup>

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76. Telephone Interview with CCJ Member (September 2013).

77. *Resolution 7: Regarding Authorization for Australian Lawyers To Sit for State Bar Examinations*, CONF. CHIEF JUSTICES (Feb. 7, 2007), <http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/02072007-Regarding-Authorization-for-Australian-Lawyers-to-Sit-for-State-Bar-Examinations.ashx>. This Resolution held:

WHEREAS, Australia shares the common law tradition with the United States; and

WHEREAS, the growing trade and economic relations between the United States and Australia is increasing the demand for and interest in transnational legal practice between the two countries; and

WHEREAS, individuals must complete a rigorous and prescribed course of study at a recognized Australian University as well as a period of supervised practice in order to be admitted to practice in Australia; and

WHEREAS, Australia permits American lawyers admitted to practice in a state to be eligible for admission to practice in Australia without study at an Australian University; and

WHEREAS, most state supreme courts that require graduation from an ABA-accredited law school in order to be admitted to practice have discretion to waive this requirement in appropriate cases;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices urges each state supreme court to consider permitting individuals who have graduated from an Australian University and have been admitted to practice in Australia, and who meet the state requirements regarding experience, character, and fitness, to sit for the bar examination and if they pass that examination, to be admitted to the practice of law in the state.

*Id.*

78. Indeed, minutes of the meeting of the Conference of Chief Justices when both Resolutions 7 and 8 were adopted reflect a discussion about whether other common law countries should be considered in the same vein as Australia. Conference of Chief Justices, 2007 Midyear Meeting: General Business Meeting Minutes 7 (Feb. 7, 2007) (on file with *Fordham Law Review*).

79. The SCII is identified as the “Lacey Committee” in many of the relevant documents and surrounding discussion. Justice Elizabeth Lacey was the chair of the SCII, of which I was a liaison member for part of the Committee’s duration. See AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSION TO THE BAR, REPORT OF THE SPECIAL COMMITTEE ON INTERNATIONAL ISSUES 4 (2009), available at [http://www.americanbar.org/content/dam/aba/migrated/lealed/accreditation/International\\_Issues\\_Report\\_final\\_2\\_.DOC](http://www.americanbar.org/content/dam/aba/migrated/lealed/accreditation/International_Issues_Report_final_2_.DOC).

The SCII reached beyond its membership to gather information by surveying state licensing and regulatory authorities about their experiences with international applicants and their interest in guidance on these issues.<sup>81</sup> Committee members also engaged in discussions with experts from other professions about their approach to recognizing foreign credentials.<sup>82</sup> Ultimately, the SCII concluded that accreditation should not stop at the U.S. border: if a school satisfied existing U.S. standards but was situated physically outside of the United States, the Council nevertheless should apply its approval criteria to assess the school's program.<sup>83</sup> But the SCII also recommended against the Council taking the next step regarding accreditation of foreign law schools that were not teaching U.S. law and otherwise satisfying existing U.S. standards. With regard to these schools, the SCII concluded that the effort would be too burdensome and thus inadvisable.<sup>84</sup>

The SCII also recommended gathering additional information about legal education outside of the United States to help states respond to international law graduates and to inform an effort to develop a possible model rule on admission of international law graduates. In addition, based on regulatory structures outside of law, it raised the question of whether another entity—within or outside of the ABA—should assume responsibility for evaluating international law graduates' credentials for the states.

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80. The SCII also considered whether to develop a system of accreditation or approval for LL.M. programs for international law graduates. It concluded that accreditation was perhaps not the best approach, and suggested rather that the Section develop a range of criteria . . . that would allow the ABA to advise state supreme courts and bar administrators that a graduate meeting the criteria was sufficiently educated in U.S. law that he or she could be allowed to apply to take the state bar exam even though the primary law degree was from another country.

*Id.* at 30. The goal was to avoid imposing a single standard on all LL.M. programs in order for them to obtain accreditation, but also to provide sufficient guidance to help states assess the adequacy of the preparation of international bar applicants.

81. Approximately half of the states responded to the survey. According to the SCII's report, "The survey showed that there is strong interest by the states in having the ABA facilitate the collection and centralization of information about the admission process for foreign law graduates, but did not ask about support for development of a model rule." *Id.* at 11.

82. *See, e.g., id.* at 20–21 (describing an interview with Department of Education representative Stephen Hunt).

83. *Id.* at 28 ("The Committee agreed that the Section should abandon any notion of territorial restrictions in accreditation. . . . Any law school, wherever located and whoever runs it, that develops a program that meets all the current ABA accreditation standards for United States J.D. programs should be allowed to seek accreditation.").

84. *Id.* at 29–30. The report states that

after consideration of the above issues regarding expanded accreditation, the Committee has concluded that the Council should not expand into accreditation of those foreign law schools in the first category above. The sheer number of foreign law schools, coupled with the complexity and diversity of foreign law programs, the limited expertise that currently exists to devise appropriate standards, the staff resources that would be required, among other factors, outweigh this particular approach.

*Id.* at 29. The "first category" here refers to "foreign law schools that are located outside the United States, not sponsored by a US law school, teaching non-US students." *Id.* at 27.

The SCII report led to two separate committees being assigned the job of continuing its work. A new International Legal Education Committee (ILEC) took up the issue of a model rule for admission of international law graduates. It developed a set of criteria for bar eligibility standards, including the requirement that international law graduates be admitted to practice in their home country before they attained bar eligibility status in the United States.<sup>85</sup> The criteria also included a list of U.S.-law courses required for international law graduates in order to ensure their exposure to particular substantive areas of law.<sup>86</sup> The substantive law course list would have left little time for international students to pursue noncore subjects, such as comparative or international law courses. In addition, the criteria required that each law school “publicly disclose on its website the first-time bar passage rates by state of its most recent class of graduates of an LL.M. program specifically designed to comply with this rule and to prepare its students for the practice of law in the United States.”<sup>87</sup> At nearly the same time that the ILEC was drafting its proposed model rule, New York bar authorities revised that state’s bar eligibility rule to impose similar substantive course requirements for international law graduates. In a marked shift from its earlier flexibility, the revised New York rule obligates international law graduates to spend most of their time studying core U.S. law subjects; this means that international students may not earn a bar-eligible LL.M. while focusing on the international, comparative, interdisciplinary, and related topics that also are central to U.S. legal education.<sup>88</sup> Additional changes in the New York rule require that applicants have earned an LL.M. degree (as opposed to earning credits apart from a degree program), completed four additional credit hours, and that the period of study be spread across at least two semesters, thus eliminating the opportunity to earn a bar-eligible degree through a program offered on a

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85. See AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, REPORT: PROPOSED MODEL RULE ON ADMISSION OF FOREIGN EDUCATED LAWYERS 4 (2011), *available at* [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/20110420\\_model\\_rule\\_and\\_criteria\\_foreign\\_lawyers.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20110420_model_rule_and_criteria_foreign_lawyers.authcheckdam.pdf). (“A lawyer educated at a law school located outside the United States and its territories (a ‘foreign-educated lawyer’) is qualified to take the bar examination in this jurisdiction if the foreign-educated lawyer . . . is authorized to practice law in a foreign jurisdiction”).

86. The report explained that “[t]he only required courses are Constitutional Law, Civil Procedure, Professional Responsibility and Legal Writing and Research.” *Id.* at 2. In addition, students must earn at least twenty-six credit hours in the program. *Id.* at 6.

87. *Id.* at 7.

88. See *Foreign Legal Education*, N.Y. ST. BOARD L. EXAMINERS, <http://www.nybarexam.org/foreign/foreignlegaleducation.htm> (last visited Apr. 26, 2014). One can compare section V.A.5, “Basic Courses in American Law” (for programs completed or commenced prior to the 2012 to 2013 academic year), with section V.B.6, “Required Coursework” (the most recent version for programs commencing in the 2012 to 2013 academic year). See also MARY KAY KANE ET AL., REPORT OF SPECIAL COMMITTEE ON FOREIGN LAW SCHOOLS SEEKING APPROVAL UNDER ABA STANDARDS 5 (2010), *available at* [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admission\\_s\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/20100719\\_special\\_committee\\_foreign\\_law\\_schools\\_seeking\\_approval.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admission_s_to_the_bar/council_reports_and_resolutions/20100719_special_committee_foreign_law_schools_seeking_approval.authcheckdam.pdf).

condensed basis offered outside of the fall-spring calendar.<sup>89</sup> With these more stringent course and credit hour requirements adopted by New York, which receives the lion's share of applications from international law graduates in the United States, the remainder of the ILEC proposal lost its luster. The potential of mandated disclosure of bar results for international law graduates was especially concerning to law schools because of the low bar passage rates overall for such students.<sup>90</sup> Perhaps not coincidentally, the proposal of the ILEC on international legal education has lain dormant.

Accreditation was taken up separately and initially was considered on a compressed time schedule by the Special Committee on Foreign Law Schools (the Special Committee).<sup>91</sup> After less than two months of study, the Special Committee recommended pursuing the accreditation project to allow foreign law schools to seek accreditation if they satisfied all of the existing standards.<sup>92</sup> This recommendation generated vigorous debate and controversy.<sup>93</sup> Subsequently, the Special Committee was reconstituted and continued its study, reaching out specifically to various stakeholders to gather their thoughts on the advisability of proceeding with the accreditation project.<sup>94</sup> In May 2012, its report "unanimously

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89. See *Foreign Legal Education*, *supra* note 88, § V.A.2, V.B.2–3.

90. The overall bar passage rate in 2013 for all applicants who were educated outside of the United States was 31 percent; New York's passage rate was 35 percent, and California's was 17 percent. These are a far cry from the passage rate for all first-time test takers for 2013: 65 percent for California, 76 percent for New York, and 78 percent for all jurisdictions combined. *2013 Statistics*, B. EXAMINER, March 2014, at 3–6, available at [http://www.ncbex.org/assets/media\\_files/Bar-Examiner/articles/830114statistics.pdf](http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/830114statistics.pdf).

91. See KANE ET AL., *supra* note 88.

92. *Id.* at 5 ("[I]f the accreditation function is to be expanded it is recommended that it only be done for the limited purpose of approving law schools that meet all the ABA accreditation Standards.").

93. The debate included a special panel at the annual meeting in 2011 of the Association of American Law Schools, which was described as follows:

This panel will address the concerns arising out of the July 19, 2010, *Report of the Special Committee on Foreign Law Schools Seeking Approval under ABA Standards*. The ABA Council of the Section of Legal Education and Admissions to the Bar appointed this special committee in June 2010. In its July report, the special committee recommended that: The Council should authorize the Accreditation Project to go forward with considering the accreditation of law schools outside the United States borders that meet all of the prevailing Section Accreditation Standards and Rules of Procedure . . . .

*Session Details*, AALS, [https://memberaccess.aals.org/eweb/DynamicPage.aspx?webcode=SesDetails&ses\\_key=f2e59552-1ac8-465f-a6a0-8a931b1cee19](https://memberaccess.aals.org/eweb/DynamicPage.aspx?webcode=SesDetails&ses_key=f2e59552-1ac8-465f-a6a0-8a931b1cee19) (last visited Apr. 26, 2014). Speakers included Jeffrey Lehman, Lauren Robel (the president-elect of AALS and then dean of Indiana University Maurer School of Law), and Mary Kay Kane (chair of the Special Committee and a professor at University of California Hastings College of Law). *Id.* For comments on the accreditation issue, see *Notice and Comment*, A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO B., [http://www.americanbar.org/groups/legal\\_education/resources/notice\\_and\\_comment.html](http://www.americanbar.org/groups/legal_education/resources/notice_and_comment.html) (last visited Apr. 26, 2014).

94. GREGORY G. MURPHY & JEROME C. HAFTER, SUBCOMM. ON BAR ADMISSIONS, EXECUTIVE SUMMARY OF THE SPECIAL COMMITTEE ON FOREIGN LAW SCHOOL ACCREDITATION (2012), available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/August%202012%20Council%20Open%20Session%20Materials/2012\\_august\\_e2\\_executive\\_summary\\_and\\_reports\\_foreign\\_law\\_school\\_accreditation.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/August%202012%20Council%20Open%20Session%20Materials/2012_august_e2_executive_summary_and_reports_foreign_law_school_accreditation.authcheckdam.pdf).

recommend[ed] that the Council not proceed to undertake accreditation of law schools outside of the U.S. and its territories.”<sup>95</sup> For now, at least, the accreditation project seems to be dead.

By focusing on the forces framing the Council’s policy decisions regarding these two global issues, the influence of globalization emerges. Certain actors and organizations pressing for action have explicit ties to a global agenda. But the participation of others, such as the CCJ, offers a more complex story of the interaction of global and domestic matters. At the time the global agenda was developed and pursued, domestic matters were heating up: the economic downturn reverberated through the hiring market for new law graduates; the Council’s interest in outcomes assessment generated significant controversy within the legal academy; and the growing debate about the future of U.S. legal education played out in electronic media, among other venues, which facilitated the participation of a wide variety of stakeholders. Legal education might be characterized as having lost its way during this period. Certainly, the shift from standardization to variety as the watchword for the system of legal education is visible in the most recent period. The shift from standardization may be reflected in the governing regime, too, as explored below.

### III. ALTERNATIVE PATHS TO LEGITIMACY

I turn now to alternative paths to legitimacy. If international law graduates and foreign law schools cannot obtain the same imprimatur that the Council provides to J.D. students and U.S. law schools, what alternatives are available to them? The discussion here offers several examples to highlight possible approaches that global actors have taken or may pursue. While not necessarily a complete analysis, my hope is that it reveals the potential force of globalization in contributing to the fracturing of the single standardized approach that accreditation has offered in the United States.

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95. *Id.* at 2. The Special Committee’s recommendation was based on the following arguments:

(1) Accrediting foreign law schools would divert attention and resources from the Section at a time when the Section and its Council are facing a multitude of pressing issues which have placed significant strain on both the financial and personnel resources of the Section. (2) It would be difficult, if not impossible, to acculturate students in foreign law schools in the culture, values, and ethics of the American legal system. (3) A decision to accredit foreign law schools would require the Accreditation Project to engage in the difficult task of developing and implementing appropriate standards and processes, including the means of monitoring compliance with the Standard’s academic freedom and other U.S.-centric requirements. These standards and processes would need to be equivalent to those currently used in accrediting law schools in the U.S. and its territories. The Committee agreed that, regardless of any decision that the Council makes about the accreditation of foreign law schools, the issue of establishing appropriate standards and procedures for the significant number of foreign lawyers who seek to be licensed in U.S. jurisdictions would remain unresolved.

*Id.*



Three alternative sources of legitimacy for global actors are considered here: (1) U.S.-based organizations, (2) the market for new law graduates, and (3) alternative education and licensing regimes that exist outside of the United States. In each case, both international law graduates and foreign law schools are potential beneficiaries.

The first source involves organizations based in the United States that might be (or have been) approached directly by foreign law schools and international law graduates. At least four current examples can be offered, along with two possibilities for the future. Most obvious are the individual U.S. jurisdictions that already serve as a crucial path to licensure for international law graduates, as described earlier.<sup>96</sup> New York is the leading example because it has allowed more international law graduates to sit for its bar exam each year than all other U.S. jurisdictions combined.<sup>97</sup> Adding to the significance of New York's decision to recognize foreign legal education in its bar admission rules are at least two additional factors: its role as a global commercial center, home to many of the most prestigious law firms and important financial clients, and its significance as the choice of governing law for many international commercial transactions.<sup>98</sup> Many international law graduates who are licensed in New York build substantial careers in the United States, despite not being able to satisfy the general condition imposed in the Council's regulatory rubric because they have not earned a U.S. J.D.<sup>99</sup> Since state control over licensing is fundamental in the United States, the power of the Council's Statements is limited to the extent they are contradicted by alternative approaches established by individual states.

While the focus on New York makes sense for purposes of state regulation for international law graduates, for foreign law schools certain other U.S. jurisdictions offer important avenues for recognition. Two states—Vermont and Massachusetts—recognize Canadian law schools by name in their rules.<sup>100</sup> Massachusetts, for example, explicitly recognizes comparability in its rule: "Graduates of common law studies at Canadian law schools that are members of the Law School Admissions Council shall be permitted to sit for the general bar examination or apply for admission

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96. See *supra* note 63 (regarding New York's role in recognition of international legal education); *supra* note 75 (regarding Australia's outreach to individual states).

97. 2013 Statistics, *supra* note 90, at 10–11. In 2013, more than three-quarters of all bar applicants who earned their primary legal education outside of the United States sat for the bar in New York. In total, 4,602 applicants who earned their legal education outside of the United States sat for the 2013 New York bar examination, 1,588 of whom passed (passage rate of 35 percent); during this same period, the total number of applicants who earned their legal education outside of the United States and sat for a 2013 bar examination in all U.S. jurisdictions combined (including New York) was 5,928 (passage rate for the combined group was 31 percent. *Id.*

98. See, e.g., King Fung Tsang, *Forum Shopping in European Insurance Litigation: A Comparison Between Jurisdictional Rules in the European Union and the United States*, 32 LOY. L.A. INT'L & COMP. L. REV. 239, 268 (2010) ("In fact, New York law and English law remain the most popular choices as the governing law in international transactions.").

99. Silver, *supra* note 60, at 1058; see also Silver, *supra* note 63.

100. COMPREHENSIVE GUIDE, *supra* note 11, at 16.

on motion on the same basis as graduates of law schools approved by the American Bar Association.”<sup>101</sup> This sort of endorsement of foreign law schools provides a meaningful alternative to ABA approval.

The use of the LSAT as an entrance examination is another path to claiming legitimacy, along with comparability to ABA-accredited law schools. The LSAT (or an LSAC-prepared local variant) is used in admission decisions in a variety of non-U.S. law schools, including the Jindal Global Law School, a new law school in India that was designed to “impart[] a rigorous and multi-disciplinary legal education with a view to producing world-class legal professionals, scholars, and public servants.”<sup>102</sup> Using the LSAT is a convenient way to indicate that the foreign law school values similar qualities in its applicants and students as those that are considered fundamental in the United States.

A third example of U.S.-based organizations that provide alternative opportunities for legitimacy are individual U.S. law schools. The reputation of a very small group of U.S. law schools is sufficiently strong and broadly recognized to deliver a signal both in the United States and abroad, which may prove valuable quite apart from any consequence of study there related to bar eligibility. But even apart from these elite schools, relationships with U.S. law schools offer foreign law schools important opportunities, including student and faculty exchange<sup>103</sup> and collaboration on conferences,<sup>104</sup> research, and teaching; each of these is an element in building a law school’s global profile. At the same time, such relationships also benefit the U.S. partner, both conceptually—by supporting claims to a global profile—and operationally—by offering new opportunities for its stakeholders. Moreover, certain unique programs developed by U.S. law schools—such as the University of Miami School of Law’s LawWithoutWalls<sup>105</sup> and Georgetown Law Center’s Center for Transnational Legal Studies<sup>106</sup>—depend upon participation by foreign law schools and their students in order to succeed, while also yielding reputational benefits resulting from participation. In this way, then, U.S. law schools function independently as transmitters of legitimacy.

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101. MASS. SUP. JUD. CT. R. 3:01.

102. *About JGLS*, JINDAL GLOBAL L. SCH., <http://jgls.edu.in/content/about-jgls> (last visited Apr. 26, 2014); *LSAT India Admission Test*, JINDAL GLOBAL L. SCH., <http://jgls.edu.in/content/lSAT-india-admission-test> (last visited Apr. 26, 2014).

103. See, e.g., *New Educational Initiative*, *supra* note 31.

104. See, e.g., *Environmental and Natural Resources Law: M.C. Mehta—and Other International Experts—To Speak at LC’s Water Conference in Delhi, India*, LEWIS & CLARK L. SCH. (Apr. 29, 2013), <http://law.lclark.edu/live/news/21566> (“Realizing the Goal of Water for Life: Lessons from Around the World, an international conference two years in the making, will be held at the National Law University in New Delhi, India on May 30–31st. This event is part of LC law school’s ongoing relationship with the National Law Universities in India.”).

105. *About LawWithoutWalls*, LAWWITHOUTWALLS, <http://www.lawwithoutwalls.org/about/> (last visited Apr. 26, 2014).

106. CENTER TRANSNAT’L LEGAL STUD., <http://ctls.georgetown.edu> (last visited Apr. 26, 2014).

The Association of American Law Schools (AALS) also might offer foreign law schools an alternative path to legitimacy. Under its existing rules, foreign law schools may not participate as AALS members.<sup>107</sup> Nevertheless, faculty of foreign law schools routinely attend the AALS annual meeting, and the issue of offering some sort of formal status to foreign law schools is under discussion by the AALS Committee on Global Engagement.<sup>108</sup> If official recognition were offered to foreign law schools, this might be construed as an important signal of legitimacy. At this time, however, it remains a potential rather than reality.

Perhaps even more on the side of future potential is the possible role of the Uniform Bar Examination (UBE) in offering a path to legitimacy for both international law graduates and foreign law schools. The UBE serves as a new and more standardized approach to the bar examination.<sup>109</sup> According to the National Conference of Bar Examiners (NCBE), which developed and administers the exam, the UBE is intended

to test knowledge and skills that every lawyer should be able to demonstrate prior to becoming licensed to practice law. It is composed of the Multistate Essay Examination . . . , two Multistate Performance Test . . . tasks, and the Multistate Bar Examination. . . . It is uniformly administered, graded, and scored by user jurisdictions and results in a portable score.<sup>110</sup>

The UBE begins as detached from any particular jurisdiction, becoming relevant where the bar exam regulators accept its approach and set their own score.<sup>111</sup> This detachment provides the ideal opportunity for international law graduates to use the UBE as a mechanism for assessment that provides a measure of comparability of their preparation to that of U.S. J.D. graduates.<sup>112</sup> Even without a regulatory regime that recognizes an

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107. See *AALS Handbook: Membership Requirements*, ASS'N AM. L. SCHOOLS, [http://www.aals.org/about\\_handbook\\_requirements.php](http://www.aals.org/about_handbook_requirements.php) (last visited Apr. 26, 2014).

108. At the 2014 AALS annual meeting, the Committee on Global Engagement addressed AALS's engagement with foreign institutions and law schools, among other things. See *Session Details*, ASS'N AM. L. SCHOOLS, [https://memberaccess.aals.org/eweb/DynamicPage.aspx?webcode=SesDetails&ses\\_key=d091d01f-cf76-4975-8505-e28f64ecb3c8](https://memberaccess.aals.org/eweb/DynamicPage.aspx?webcode=SesDetails&ses_key=d091d01f-cf76-4975-8505-e28f64ecb3c8) (last visited Apr. 26, 2014).

109. See, e.g., Veryl Victoria Miles, *The Uniform Bar Examination: A Benefit to Law School Graduates*, B. EXAMINER, Aug. 2010, at 6, 8, available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/miles\\_the\\_uniform\\_bar\\_exam.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/miles_the_uniform_bar_exam.authcheckdam.pdf) ("The UBE offers uniformity and consistency in test questions and grading rubrics among participating jurisdictions and ensures the same level of exam quality and comparability of scores among jurisdictions.").

110. *The Uniform Bar Examination (UBE)*, NAT'L CONF. B. EXAMINERS, <http://www.ncbex.org/about-ncbe-exams/ube/> (last visited Apr. 26, 2014).

111. See Miles, *supra* note 109, at 9 ("Other aspects of bar admissions that are of importance to individual jurisdictions will remain within the authority of each jurisdiction. These include character and fitness decisions, educational prerequisites (e.g., graduation from an ABA-accredited law school), pass/fail cut scores, ADA accommodation decisions, and the duration of UBE score portability.").

112. See generally Carole Silver & Mayer Freed, *Translating the U.S. LLM Experience: The Need for a Comprehensive Examination*, 101 NW. U. L. REV. COLLOQUY 23 (2007) (proposing a comprehensive exam).

international law graduate as bar eligible, a score on the UBE would provide some indication of knowledge of U.S. law. Moreover, the UBE might be used by a foreign law school that aims to teach U.S. law as a means of assessing its students' learning. In each case, access to the UBE could be provided by the NCBE apart from the ability of international law graduates or students at a foreign law school to convince a particular U.S. jurisdiction of their bar eligibility status. At the same time, however, it may be unlikely that the NCBE would divert its attention to focus on global actors or otherwise risk the use of the UBE as a basis for challenging restrictive state rules while it is engaged in advocating for adoption of the UBE by the states.

The second alternative source of legitimacy for global actors is the hiring market for new law graduates. As noted earlier, recruiting decisions involve an assessment related to legitimacy. When a new law graduate is hired by an elite law firm or other prestigious employer, the hiring decision signals to a variety of audiences that the employer considers the assets of the new graduate to be valuable and sellable to the employer's clients or other audiences.<sup>113</sup> In the United States, because lawyers not licensed locally are subject to charges of unauthorized practice, the bar functions as a barrier to employment for international law graduates. Consequently, law school in the form of a U.S. J.D. serves as a key element to being hired and to the resulting signal of legitimacy. But because certain U.S. jurisdictions authorize international law graduates to sit for their bar exam despite not having earned a U.S. J.D., it is possible to bypass the Council's stance by pursuing this state-based imprimatur.<sup>114</sup> At the same time, the market for law graduates transcends the United States, and even U.S.-based law firms regularly hire lawyers licensed only outside of the United States for their overseas offices. These hiring decisions provide a link between the firm's credibility and prestige and that of its lawyers, and in this regard symbolize the legitimacy of the lawyer's credentials and background. But this external activity has domestic implications, too: the relationship of an international law graduate to an elite, U.S.-based law firm offers a path to promoting credibility of the graduate in the U.S. market, based on the law firm's

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113. See Bryant G. Garth & Joyce Sterling, *Exploring Inequality in the Corporate Law Firm Apprenticeship: Doing the Time, Finding the Love*, 22 GEO. J. LEGAL ETHICS 1361, 1365 (2009) ("Historically, . . . the lawyers who gained the prestigious partnership positions were from the most elite law schools, which historically and currently draw mainly from relatively advantaged social groups. Individuals who gained entry into the leading law schools would join the ranks of the associates at the large corporate law firms, and out of that pool would come a new generation of partners. Those who did not become partners would be placed at boutique firms or would become in-house counsel of businesses with strong relationships with the particular corporate firms. In this manner a network of lawyers from similar backgrounds and schools secured the leading legal positions in the corporate law firms and the businesses with which they dealt. The status of the positions was reinforced partly by relatively high salaries, but also by the fact that they were occupied by individuals validated with degrees from the most prestigious schools.").

114. Ronit Dinovitzer & John Hagan, *Lawyers on the Move: The Consequences of Mobility for Legal Careers*, 13 INT'L J. LEGAL PROF. 119, 121 (2006) ("[T]he worth of a particular form of symbolic capital is based on its recognition as valuable in local settings.").

reputation. In this way, even without any U.S. law credential, the hiring market signals legitimacy.

The third possible alternative source for gaining legitimacy is to forego the United States in favor of pursuing global legitimacy in another forum. In the past, the simplicity of the U.S. regime—which, in its most basic form required law school but no practical training as a prerequisite to bar admission—has made it an attractive option for international law graduates.<sup>115</sup> In contrast, the English structure until recently had required a period of practical training post-examination, which was difficult for international students because of the uncertainty regarding obtaining an articling or pupillage position, as well as the additional time required.<sup>116</sup> Australia's required training period presents a similar burden.<sup>117</sup> But it is unrealistic to assume that English and Australian regimes are static; if global forces exert pressure for change in the United States, they certainly also are felt elsewhere.<sup>118</sup> And in fact, in 2011,<sup>119</sup> England revised its rules to accommodate lawyers licensed outside of England by allowing qualification based solely on two tests, foregoing the earlier practical training requirement.<sup>120</sup> This simplified structure could draw international law graduates away from the United States by providing an alternative path to legitimacy, bypassing the United States entirely. One significant difference remains between the English and New York regimes, in that England's rule extends only to applicants already qualified as lawyers in

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115. See Silver, *supra* note 2, at 29 (“A senior partner in a U.K.-based international firm explained, ‘[t]he huge advantage of the U.S. is the route to the New York bar. For the U.K., the LL.M. is not a path to qualification.’” (alteration in original)).

116. See John Flood, *What Is Fitness for Purpose?*, BLOG—RANDOM ACADEMIC THOUGHTS (RATS) (Feb. 29, 2012, 5:16 PM), <http://www.johnflood.com/blog/2012/02/what-is-fitness-for-purpose/> (“[T]he structure of English legal qualifications—degree, vocational learning, training contract—impedes the route to qualification rather than open [sic] it up.”).

117. See *Practical Legal Training*, L. SOC'Y N.S.W., <http://www.lawsociety.com.au/ForSolicitors/practisinglawinnsw/becomingasolicitor/plt/index.htm>; *How To Qualify As a Lawyer in New South Wales, Australia*, INT'L B. ASS'N, [http://www.ibanet.org/PPID/Constituent/Student\\_Committee/qualify\\_lawyer\\_AustraliaNewSouthWales.aspx](http://www.ibanet.org/PPID/Constituent/Student_Committee/qualify_lawyer_AustraliaNewSouthWales.aspx) (“Work Experience Component: Consists of 75 working days and may be completed full-time or part-time (at least two days a week).”).

118. My focus here is on English-speaking common law jurisdictions, which have held leading positions in the global legal market, but in the future this could shift as well. See generally Silver, *supra* note 63 (describing the advantages of international law graduates from English-speaking common law countries with regard to obtaining employment in the United States).

119. For a history of amendments to the Qualified Lawyers Transfer Scheme, see *History: Introduction to the Qualified Lawyers Transfer Scheme Regulations*, SOLIC. REG. AUTHORITY, <http://www.sra.org.uk/solicitors/handbook/qlts/part1/history.page> (last visited Apr. 26, 2014).

120. See *Key Features of the New Transfer Scheme*, SOLIC. REG. AUTHORITY, <http://www.sra.org.uk/solicitors/qlts/key-features.page> (last visited Apr. 26, 2014) (“The new transfer scheme removes the Qualified Lawyers Transfer Regulations experience requirement and, instead, uses practical exercises as an objective way of assessing applicants’ ability to practise in England and Wales.”).

another jurisdiction, while New York includes law graduates who have not yet qualified as lawyers in their home jurisdictions.<sup>121</sup>

Global legitimacy also is the focus of certain new education programs developed outside of the United States. These are graduate-level legal education programs designed to teach global lawyering skills to students. The teaching is in English and the target is preparing students to engage in sophisticated global practices. In addition, certain of these programs may be aiming at U.S. bar eligibility for their graduates, as well.<sup>122</sup>

Each of the alternatives described in this Part has the potential of contributing to the fraying of the Council's authority as the central voice for the legitimization of legal education. Individual states provide explicit and meaningful options for both international law graduates and foreign law schools, while the market for new law graduates, along with the use of U.S.-related admission standards, works indirectly but no less importantly in providing global actors with legitimacy. Law schools in and outside of the United States, and overseas regulatory structures that offer alternative options for recognition of foreign legal credentials, also contribute opportunities to bypass the existing official U.S. structure. Finally, the potential offered by the AALS and UBE, if realized, could contribute to destabilizing the Council's role in overseeing U.S. legal education. But even without these additional forces, the current controversy in the United States surrounding legal education has resulted in substantial challenge to the Council's role; these are discussed below with the insight provided by the global context.

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121. N.Y. CT. APP. R. 520.6(a) ("An applicant who has studied in a foreign country may qualify to take the New York State bar examination by submitting to the New York State Board of Law Examiners satisfactory proof of the legal education required by this section.").

122. See, e.g., *Juris Doctor: Preparing Students for a Global Legal Career*, QUEEN'S UNIV. BELFAST, <http://www.qub.ac.uk/schools/SchoolofLaw/StudyattheSchool/PostgraduateStudies/JDJurisDoctor/> (last visited Apr. 26, 2014); see also *supra* note 41 and accompanying text (discussing Peking School of Transnational Law). The Queen's University Belfast (QUB) website includes the following frequently asked question and answer:

Does a J.D. from QUB entitle students to write the Bar examination in any US states? The educational requirements vary from state to state and are subject to change. Information on the individual state bar associations can be found at <http://www.abanet.org/legaled/baradmissions/bar.html>. Under the present regulations (which are subject to change), students can sit the *New York* Bar Exam if you have a foreign equivalent of an American Bar Association-approved J.D. such as the J.D. at QUB. For further information, see New York State Board of Law Examiners Foreign Legal Education requirements and New York State Board of Law Examiners Request for Evaluation of Foreign Academic Credentials Form. *FAQs and Further Information*, QUEEN'S UNIV. BELFAST, <http://www.law.qub.ac.uk/schools/SchoolofLaw/StudyattheSchool/PostgraduateStudies/JDJurisDoctor/FAQs/#five> (last visited Apr. 26, 2014) (emphasis added); see also HAUTES ÉTUDES APPLIQUÉES DU DROIT, <http://www.ecolehead.fr/> (last visited Apr. 26, 2014) (explaining that it offers graduate-level legal education in English).

## IV. CONTEXTUALIZING THE GLOBAL INFLUENCE

The global actors and influences that have been the focus of this Article nearly disappear when the frame shifts to the current controversies challenging legal education in the United States. Battle lines there have been drawn around issues of cost and access, variation and standardization, curricular and structural reform, outcomes and assessment, and the crucial factor of the employment market, among other factors. During this period, law schools have experienced severe declines in applications and enrollment while faculty, current and former students, and others have vigorously—and sometimes viciously—criticized both the overall model and structure of U.S. legal education and the conduct of particular law schools.<sup>123</sup> In much of the debate, the voice of the Section and Council represented simply another faction in the controversy. Even the ABA seemed unable to support the Section's leadership when it housed a new Task Force on the Future of Legal Education in the ABA's Center for Professional Responsibility rather than in the Section of Legal Education.<sup>124</sup>

Thus, it is appropriate to question the security of the Council's position as a key holder of power over legitimacy in the world of U.S. legal education. The debates outlined above have led to pressure for alternative approaches to the partnership between the Section and state regulatory authorities. Certain states have developed new paths to licensing, including establishing additional conditions for J.D. graduates in order to reach bar eligibility<sup>125</sup> and recognizing non-J.D. degrees (apart from those most relevant to international law graduates) as pathways to providing legal services.<sup>126</sup> In other words, the same entities that offered a bypass to the

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123. See, e.g., BRIAN Z. TAMANAH, *FAILING LAW SCHOOLS* (2012); Bill Henderson, *Review of Failing Law Schools*, by Brian Tamanaha (Part I), LEGAL WHITEBOARD (May 14, 2012), <http://lawprofessors.typepad.com/legalwhiteboard/2012/05/review-of-failing-law-schools-by-brian-tamanaha.html> ("But for Tamanaha, some pesky journalists, angry students, and the ticking time-bomb of law students debt, I am confident that we law professors could coast along on our present track for another several decades. As an insider, I can honestly testify that we believe—sincerely believe [sic]—that we care about our students, the quality of their education, their debt loads, and their future job prospects. But looking at the same set of facts, history will draw its own conclusions. And Tamanaha, akin to a lawyer building a case, offers up a very compelling narrative that the dispassionate observer is likely to find convincing."); see also Ethan Bronner, *Law Schools' Applications Fall As Costs Rise and Jobs Are Cut*, N.Y. TIMES, Jan. 30, 2013, at A1 ("‘We are going through a revolution in law with a time bomb on our admissions books,’ said William D. Henderson, a professor of law at Indiana University, who has written extensively on the issue. ‘Thirty years ago if you were looking to get on the escalator to upward mobility, you went to business or law school. Today, the law school escalator is broken.’").

124. Information on the Task Force is available on the Center's website at *Task Force on the Future of Legal Education*, A.B.A., [http://www.americanbar.org/groups/professional\\_responsibility/taskforceonthefuturelegaleducation.html](http://www.americanbar.org/groups/professional_responsibility/taskforceonthefuturelegaleducation.html) (last visited Apr. 26, 2014).

125. See N.Y. CT. APP. R. 520.16 (describing rules of the Court of Appeals for the admission of attorneys and counselors at law). See generally COMPREHENSIVE GUIDE, *supra* note 11, at 17 (describing in Chart 5 additional requirements prior to, during, and after law school).

126. See *Washington Limited License Legal Technician (LLLT)*, U. WASH. SCH. L. GALLAGER L. LIBR., <https://lib.law.washington.edu/content/guides/llltguide> (last visited Apr. 26, 2014).

Council's refusal to recognize international law graduates and foreign law schools have assumed a more active role in regulating around the Council in the domestic sphere. While it is too much to suggest that the experience with regard to global actors galvanized action in the more complex domestic environment, or vice versa, it well may be that activity in one normalized expectations regarding activity in the other.

Despite the Council's intentions, it has not avoided the effects of globalization. Global actors approached the job of gaining legitimacy through several alternative attempts; when a direct strategy of working with the Council was unsuccessful, an indirect path was pursued. While the alternatives pursued by foreign law schools and international law graduates may seem weak in comparison to the direct attacks that the Section is experiencing in the current controversial climate, they prepared the way for the potential of a more significant splintering of power.<sup>127</sup> It does not take much imagination to construct a story in which a global actor is transformed into a more significant threat. Imagine, for example, STL obtaining success in its mission both to convince the market for new lawyers to accept its graduates in place of their earlier diets of Harvard, Columbia, and NYU graduates, and to persuade one of the major commercial jurisdictions in the United States to recognize its J.D. degree as producing bar eligibility. Global law firms<sup>128</sup> with offices in China look to STL graduates for their new hires, and soon enough other offices of those firms also recruit from the school. Together, the market and state bar authorities combine then to strike a more meaningful incursion into the position of the Section.

Using a global framework to analyze the existing controversy surrounding U.S. legal education offers several insights. It reveals how attractive U.S. legal education remains to outsiders, including foreign law schools and international law graduates. It also clarifies the strength that the Council's approval regime holds in that U.S. law schools have not faced a significant domestic challenger for the job of educating lawyers; in contrast, in other jurisdictions non-law schools have begun competing for

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127. On the general relationship of globalization to governance and fraying of power, see James N. Rosenau, *Illusions of Power and Empire*, 44 HIST. & THEORY 73, 85 (2005) (describing "how the disaggregation of authority has fostered a multi-centric, crowded global stage that seems bound to inhibit—even prevent—the concentration of power required by any empire"). See also David Held, *Regulating Globalization? The Reinvention of Politics*, 15 INT'L SOC. 394, 394 (2000) (arguing that globalization has not "simply eroded the nature of sovereignty and autonomy. Rather, . . . there has been a reconfiguration of political power, which has created new forms of governance and politics—both within states and beyond their boundaries").

128. The Ministry of Justice listed 208 foreign law offices in China as of the end of 2011 (certain firms support multiple offices). *Foreign Law Firms in China—2012 Listings*, CHINA BRIEFING (Feb. 7, 2012), <http://www.china-briefing.com/news/2012/02/07/foreign-law-firms-in-china-2012-listings.html>. In addition, based on my original research comprised of information on law firms' websites, at least fifty U.S.-based law firms included on the *American Lawyer 100* or *Global 100* lists supported one or more offices in China as of 2012.



the right to educate lawyers.<sup>129</sup> At the same time, the global framework highlights the vulnerability of the U.S. regime as it is transformed from a standardized model with substantial control vested in the Council, to a diverse set of approaches that may not accommodate a single umbrella organization like the Council. Without the single voice, however, there may be no strong proponent of the U.S. system of legal education to promote it globally, much less domestically.

Perhaps one of the most important lessons from this global analytic framework is to note this void regarding promoting the value of U.S. legal education. The competition that characterizes the U.S. debates over legal education needs its complement in a shared interest that advances a common value in the importance of the U.S. approach—or approaches—to legal education. Without this, U.S. law schools risk losing international law graduates—and perhaps other students—to competitors, and U.S. lawyers and law firms risk losing status in the global market for legal services.<sup>130</sup> The Section might take on that role of global promoter, and in this way use globalization as the path to unify—even in the context of a framework built on the goal of variety—the message that U.S. legal education still has much to offer as a model, an experience, and a path toward the profession.

#### CONCLUSION

The strength of U.S. legal education in the global market for education and lawyers has been quite remarkable. It has served as an important model for foreign law schools, which is related to the attractiveness of U.S. law schools for international law graduates. Efforts to reform legal education in China, Japan, Korea, and elsewhere were informed by graduates of U.S. law school programs, who drew on their knowledge of U.S. legal education to develop local adaptations. Individual law schools in Europe and elsewhere also have adopted certain elements of the U.S. legal education model. In many instances, the term “American model” is used to describe new legal education programs and initiatives in order to highlight particular structures and characteristics that have come to be associated with the U.S. approach to legal education.<sup>131</sup>

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129. See Rachel Vanneuville, *French Schools of Law: Reconfigurations of Contemporary Legal Education for Elites* 11 (June 2013) (unpublished manuscript) (on file with *Fordham Law Review*) (describing the creation by Sciences Po of a new law school with the “ultimate goal, as its dean puts it, would be to provide France with a legal elite that would resemble the ‘American lawyers’: a trained-in-law elite which acts as professional go-betweens of economic, administrative and political affairs”); see also Rachel Vanneuville, *The Role of Lawyers in the Reshaping of French Contemporary Higher Legal Education* (June 2011) (unpublished manuscript) (on file with *Fordham Law Review*).

130. See generally YVES DEZALAY & BRYANT G. GARTH, *DEALING IN VIRTUE: INTERNATIONAL COMMERCIAL ARBITRATION AND THE CONSTRUCTION OF A TRANSNATIONAL LEGAL ORDER* (1996) (describing the unifying promotion of the field of international commercial arbitration by those who also promote their own version of arbitration).

131. See, e.g., Lehman, *supra* note 41 (“What does it mean to teach law ‘American style,’ in China? . . . [T]here is substantial confusion what exactly is being copied. There are many candidates, and different emulators seem to have seized on different features of American legal education. For example: We teach older students. We teach students who have

The tight control over that “American model” exerted by the Council has prevented global actors from sharing the same rewards and recognition available to domestic actors. The monopoly exerted by the Council still addresses a domestic-only market, regardless of market forces having shifted some time ago. By failing to acknowledge this change, the Council risks undermining its own power.

At the same time, the circumstances discussed in this Article offer the opportunity for disruption of the existing spheres of influence exerted by the United States in legal education. Here, the focus is less on the role of technology and more on simple competition from local players.<sup>132</sup> Law schools based outside of the United States already are developing programs to offer students the elements recognized as comprising a U.S. law school experience, but without the expense of travel to the United States and related disruption to their careers. They teach in English (meaning, in most cases, students are at least bilingual), and include experiential and applied courses along with more traditional doctrinal and theoretically focused classes. They emphasize interaction in the classroom and the importance of international experiences and sophistication. And with the constricting opportunities for law faculty in the United States, many of these schools are using experienced U.S. law professors as well. They are freed from any rigidity inherent in the U.S. law school regulatory regime. And many of these new initiatives are sponsored by, and gain from, the participation of the very organizations that will employ their graduates.

Of course, being in the United States offers its own lessons. And bar eligibility will be limited or possibly unavailable to students who remain overseas. But these are not necessarily central to the interests of international law students if their prospective employers favor the local alternative. That is, it may not be worth the added cost to obtain these additional experiences and credentials. If the same employers also operate in the United States—a likely scenario<sup>133</sup>—it makes sense to consider

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studied something other than law. We use a curriculum that pays attention to the common law. We use a curriculum that stresses the reading of judicial decisions. We use a pedagogy that involves something *other* than having a professor stand at the front of the room and read. We expect some kind of student participation in class discussions. We use something that we label ‘clinical education.’ Often the key determinant of what it means to use ‘American legal education’ has been the voice of a local legal academic who studied in the US, and who can therefore claim authority to describe what American legal education really ‘is.’ In the case of STL I have taken what might be described as a fairly conventional, conservative stance. I have been telling audiences the following story about American legal education. It deemphasizes the mastery of any particular body of rules and instead stresses the development of intellectual skills. . . . The ability to generate abstract structures of classification and categorization on demand, and then to describe any given situation by reference to categories that are doctrinally salient. And second, what I have for a long time called the capacity for sympathetic engagement with counterargument.” (quotation marks omitted)).

132. See Ray Worthy Campbell, *Law School Disruption*, 26 GEO. J. LEGAL ETHICS 341 (2013).

133. See Christopher Baker ’83, *A Global Career: From Paris to Kazakhstan and Beyond*, UNIV. CHI. ALUMNI, <http://www.law.uchicago.edu/alumni/accoladesandachievements/christopher-baker-83-global-career-paris-kazakhstan-and-beyond> (last visited

whether they would be equally supportive of a similar alternative version of education and preparation if available to U.S. students. In this sense the threat of disruptive innovation<sup>134</sup> becomes clear with regard to the global framework, and experiments in legal education overseas have the potential to encourage a reconsideration of control over legal education in the United States, as well.

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Apr. 26, 2014) (describing Baker as “one of the key leaders behind the establishment of France’s newest law school, the independent, privately funded École des Hautes Études Appliquées du Droit (School of Advanced Studies of Applied Law), which offered its first classes last month”).

134. On disruptive innovation, see *Disruptive Innovation*, CLAYTON CHRISTENSEN INST. DISRUPTIVE INNOVATION, <http://www.christenseninstitute.org/key-concepts/disruptive-innovation-2/?gclid=CK-H4ces3L0CFbFaMgodrT4AQQ> (last visited Apr. 26, 2014) ([T]he theory [of disruptive innovation] explains the phenomenon by which an innovation transforms an existing market or sector by introducing simplicity, convenience, accessibility, and affordability where complication and high cost are the status quo.”). See also Clayton M. Christensen, Dina Wang & Derek van Bever, *Consulting on the Cusp of Disruption*, HARV. BUS. REV. (Oct. 2013), <http://hbr.org/2013/10/consulting-on-the-cusp-of-disruption/ar/1> (discussing the legal industry in comparison to the consulting industry).